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Newsletter

Virginia Association of Broadcasters

March 2011

VAB Joins Effort to Support “Let’s Move!” Initiative

The National Association of Broadcasters Education Foundation (NABEF) is spearheading a “Let’s Move! Flash Workout” featuring 16-time Grammy Award winner Beyoncé to demonstrate support for First Lady Michelle Obama’s initiative aimed at curbing childhood obesity.

The event, produced in partnership with the National Middle School Association (NMSA), the National School Boards Association (NSBA) and the American Association of School Administrators (AASA), calls for middle school students across the country to participate in a pre-choreographed “Let’s Move!” dance exercise routine at an identical time -- Tuesday, May 3, at 1:42 p.m. Eastern Time.

Beyoncé will be the exclusive featured performer for the “Let’s Move! Flash Workout.” She has re-written and re-recorded one of her songs and is providing an instruction video demonstrating the dance/exercise routine. The Beyoncé video will then be distributed to participating schools. Both the song and instruction video are being produced in English and Spanish.

“NABEF is proud to assist the First Lady’s ‘Let’s Move!’ campaign and supports efforts to address the epidemic of childhood obesity,” said NABEF President Marcellus Alexander. “We can think of no greater gift to America than keeping our nation’s children healthy



while giving them a greater appreciation for the importance of an active lifestyle.”

“I am excited to be part of this effort that addresses a public health crisis,” said Beyoncé. “First Lady Michelle Obama deserves credit for tackling this issue directly, and I applaud the NAB Education Foundation for trying to make a positive difference in the lives of our school children.”

Underscoring the broadcast industry’s commitment to helping inform and educate our nation’s children and parents on the benefits of healthy eating and living, this nationwide initiative is

“First Lady Michelle Obama deserves credit for tackling this issue directly, and I applaud the NAB Education Foundation for trying to make a positive difference in the lives of our school children.”

BEYONCÉ KNOWLES

designed to unite radio and television broadcasters with schools across the country to promote a healthier lifestyle.

VAB Communications Coordinator, Marci Malinowski is reaching out to broadcasters in an effort to obtain maximum exposure for the event. If you would like more information, contact her at 434/977-3716. ❖

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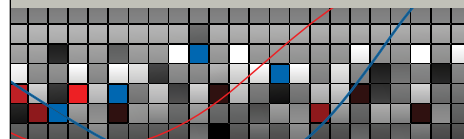


74th Annual Summer Convention

VIRGINIA ASSOCIATION OF BROADCASTERS

June 23-25, 2011

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Virginia Beach, Virginia





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Remembering Karen Cronin

Karen A. Cronin, 64, of Elliston, Va., devoted to her husband, family, friends and community, passed away on Sunday, February 20, 2011, following an accident while snorkeling in Hawaii. Born in 1947 in Honolulu, Hawaii, she graduated Northwestern University in 1968 and later received a Master's in Communication from Radford University. She worked at WDBJ-7 in Roanoke and for 22 years as a video producer and radio programmer at Virginia Tech. At Virginia Tech, she served as advisor to Delta Delta Delta sorority for which she was honored as Outstanding Sorority Advisor.

Karen's legacy to eastern Montgomery County and all of the New River Valley is one of graceful and joyful service to others.

Since her retirement in 2003, she served as a full-time volunteer with the New River Valley United Way, Montgomery County Social Services board, League of Women Voters of Montgomery County and League of Women Voters of Virginia. She was a member of Chapter BD, Roanoke, of the PEO Sisterhood, a national philanthropic education organization.

She was a founding member and sustainer of the EastMont Garden Club and EastMont Arts Association, editor of The LINC Letter community newsletter for eastern Montgomery County, and a board member of the Mountain Valley Charitable Foundation.

She was a member of the EastMont Tomato Festival committee, and mentioned with particular tongue-in-cheek pride her illustrious reign as the 2009 Heirloom Tomato Queen. She was also a craft teacher for events at The Meadowbrook Center, teaching fabric and glass painting among other decorative crafts.

In honor of her volunteer service, Karen was inducted in 2009 into the inaugural class of "Leading Lights: Neighbors Helping Neighbors," a community service award for the New River Valley.

She is survived by her husband, Mike Cronin, with whom she shared her passions of tennis, travel and gardening; her mother, Vivian Rivard, of Des Plaines, Ill.; her sister, Gretchen Nicholoff, of Hotchkiss, Colo.; two nephews, Jason Nicholoff and Blake Nicholoff; a great-nephew; and a great-niece.

A Memorial Service was held on Saturday, February 26, 2011, at The Meadowbrook Center, 267 Alleghany Spring Road, Shawsville.

In lieu of flowers, the family asks that contributions be made to the Karen Cronin Legacy Fund with the Mountain Valley Charitable Foundation, P.O. Box 53, Shawsville, Va. 24162 or to the charity of choice. Proceeds from the Karen Cronin Legacy Fund will perpetually support programs and projects in her beloved eastern Montgomery County. ♦



Station Listens to Listeners

Sometimes, you don't know what you've got until it's gone.

That's what Debby Stringer, general manager of WBRF-98.1 FM in Galax, says she learned the hard way last year when the country radio station made some unpopular programming changes.

It turned out that taking away long-running programs and limiting song requests hit listeners' collective ears like the screech of nails on a chalk-board.

Now, after hearing opinions from listeners for several months, Stringer says WBRF is playing a tune fans want to hear. "We listened to our listeners," she said in February, just days before the station made more changes, this time aimed at fixing what didn't work.

If comments from fans via e-mail and the station's Facebook page since then are any indication, WBRF has hit the right note this time.

Now rebranded as "Classic Country 98.1," the station has decided to ditch modern country music altogether and only play songs and artists from the late 1940s through 1994, with some bluegrass and old-time thrown into the mix.

Goodbye, Taylor Swift and Kenny Chesney. Welcome back, Patsy Cline and Merle Haggard.

It's a strategy designed to make WBRF unique in its market. "We chose to go with the classic country format to offer the listeners an alter-native," Stringer explains. "At least five stations in our listening area are programming modern country. None of them, except us, are offering classic country."

This programming shift — the biggest of the changes enacted last year — is one of the only things WBRF is keeping from the controversial past six months.

(Also getting the boot is "The Legend," a new name that was meant to evoke the classic country format.)

Stringer said the programming changes, which cost the station some listeners and a couple of on-air personalities, were business decisions aimed at growing and evolving the station. Most were not well-received, but Stringer says that WBRF — one of very few 100,000-



Station owner Debby Stringer and DJ Buford Kegley in the WBRF-98.1 FM studio.

watt stations owned by a family, not a corporation — has the freedom to try new things, and should not be afraid to do so.

"We don't want to be a cookie-cutter station," she said.

Stringer said many of the changes were instigated by Tom Collins, a new director of operations hired in July 2010. He is no longer with the station.

Stringer said popular late-night DJ Bruce Hodges' departure during the time of transition was a personnel decision and "a separate issue" not driven by the programming changes. Hodges, who now broadcasts his "NightRide USA" show on the Internet, will not be returning.

But longtime morning co-host and Galax businessman Maurice Vaughan is back after parting ways with WBRF last year. Vaughan now co-hosts "Flashback Wednesdays," playing artists like Hank Williams Sr., Ernest Tubb, Jim Reeves and Hank Snow.

"He'll pick a year and play songs from it," Stringer said. "He'll have guests from the community occasionally." Stringer's husband, John — who advises, but is not employed by, the station — said WBRF "is going back to some roots."

Classic Country 98.1 is a powerful station that reaches thousands of

listeners in four states and more than 344,000 fans who listen online around the world, "but it's also a Galax station," John Stringer said. "That's our main responsibility. We're proud to be from the Blue Ridge Mountains. This is really the birthplace of country music, and we've got to stick to our roots."

The station even responded to listeners' complaints about dropping local school closing announcements. They might not be relevant to out-of-town or Internet listeners, but John Stringer said it's a responsibility to the community.

The station reaches far into the New River Valley and to the Piedmont area of North Carolina — almost to Charlotte — and Stringer says the station's goal is to promote the Galax area to folks living in those more urban areas.

"We are also the only FM station in the Greensboro/Winston-Salem, N.C., market carrying NASCAR races," she points out.

Stringer said NASCAR's race broadcasters have been very appreciative of the station's reach into a widespread market. "We are going to set up on location at the Martinsville Speedway for the NASCAR races on April 2 and 3. They are going

continued on page 4



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Station *continued from page 3*

to put us on their big screen and give us lots of tickets to give away."

After news was taken away last year, Stringer said she heard numerous complaints. "Due to listener demand, we added back three minutes of CBS World News at the top of the hour."

Another thing being brought back are listener requests. "We got so many that it was hard to work them in, but as long as they fit the format, we'll honor them," Stringer said.

WBRF has added an "All-Request Lunch Hour" from noon to 1 p.m., Monday through Friday.

But don't call up requesting Rascal Flatts, Keith Urban or Sugarland. From now on, the sound is strictly old-school.

During the station's "Good Morning" drive-time show from 5:30-10 a.m., you'll hear songs from 1960 to 1994, with one song per hour from after 1995, Stringer said. That's when you're most likely to hear more contemporary artists like George Strait or Alan Jackson.

From 10 a.m. to 5 p.m. weekdays, the music goes all the way back to the 1940s.

Then, from 5-6 p.m., comes one of the station's most popular new programs, the "Outlaw Drive at 5" with DJ Buford Kegley, featuring artists like Hank Williams Jr., Waylon Jennings, Charlie Daniels, Willie Nelson, Johnny Cash, David Allen Coe and Tanya Tucker.

Stringer is also experimenting with adding some "alternative country" artists — the antithesis of the slickly produced Nashville sound — to the outlaw mix, like singer/songwriter Steve Earle and Guy Clark.

(A recent show featured seldom-heard gems like Earle's "Snake Oil" and a live version of Clark's "Black Diamond Strings" from MerleFest 2003.)

Stringer said her goal with "Outlaw Drive at 5" is "to program great music that you don't hear every day, along with the favorites."

Bluegrass and old-time music will remain a big part of WBRF's programming, with six hours of traditional music from 6 p.m. to midnight, and more on weekends, with DJs Jay Allen and Judith Burnette.

"And, due to the huge number of requests that we receive, we have now decided to dedicate one full hour each night to bluegrass gospel music," Stringer said.

Some partnerships this year will help the station reach a wider audience and offer an opportunity to promote Galax. WBRF is still the Wake Forest University flagship station and a media partner with North Carolina TV station WXII-12.

This year, WBRF is a top sponsor of MerleFest, the annual roots music festival in North Carolina, and a major sponsor of HoustonFest, a new two-day event in Galax kicking off in May. It honors the young banjo player Houston Caldwell, who died last year.

WBRF-FM — along with sister stations WPAQ-AM and WWWJ-AM — will sponsor the HoustonFest main stage and broadcast live from the event.

"We are going to conduct live on-air interviews of the musicians that are going to perform at HoustonFest," Stringer said. "Every Wednesday at 9:15 a.m. between now and HoustonFest, Jay Allan will interview an individual HoustonFest artist."

This July, WBRF will bring a local talent search, The Texaco Country Showdown, to the area. "It's the nation's oldest and largest country talent show," Stringer said. "Garth Brooks, Martina McBride and Tim McGraw have all participated in the past. You can win \$100,000 and get discovered."

The station got its fans involved in one of the most recent changes — selecting a new logo for Classic Country 98.1. "We had our listeners to vote on our Facebook page for their favorite new logo," Stringer said. "We drew a name from the ones that voted and the winner got a pair of tickets to MerleFest."

Stringer says that the station continues to evolve and adapt to what listeners want. She encourages fans to contact her with suggestions.

"Send us an e-mail. We'll listen — obviously!" ❖

Article courtesy of Brian Funk and the Galax Gazette.

Media Leaders to Untangle TV's Web of Influence

Dick Glover, president and CEO of Funny or Die, Nick Grad, executive vice president of original programming for FX Networks, and Chloe Sladden, director of media partnerships at Twitter, will take the stage at the 2011 NAB Show and dissect how audiences are absorbing video and engaging with television in a session titled "Most Innovative Companies: Where TV and the Web Collide."

Linear television ratings are surging as viewers engage with their favorite shows around the real-time water cooler of social media. Live TV is back with a vengeance—in part thanks to the Internet. At the same time, the rise of digital content makes television yet another screen on which to consume entertainment. How audiences watch video in the age of the social Web is changing, and with audiences increasingly streaming network programming, the lines separating creator, network and device continue to blur. This panel will explore how the television experience is changing and examine the impact of social technologies while sharing insights on where television and the Web are heading. *Fast Company* articles editor, David Lidsky, will moderate the panel discussion, which will take place in the Content Theater on Tuesday, April 12th at 1pm. The 2011 NAB Show will be held April 9-14 in Las Vegas.

"It's frankly thrilling to be able to cover the speed with which the viewing experience continues to evolve, and *Fast Company* is excited to be part of the NAB Show in our continuing effort to be at the forefront of this revolution," said Lidsky. "Our panel brings together innovative industry leaders who are driving this change, and I look forward to discussing with them where they see the future of on-screen entertainment heading."

Panelists will offer a glimpse of how content producers and audiences alike will be impacted as the digital age continues to evolve.

Dick Glover is President and Chief Executive Officer (CEO) of Funny or Die, the top destination for comedy on the Web, and an award-winning production and distribution company. Under Glover's leadership Funny or Die has



grown into a vertically integrated 21st century digital studio that produces high quality content over numerous platforms, operates a social media and marketing division with over 1.9 million Twitter followers and nearly 2 million Facebook fans. The site has over 10 million unique users per month and over 34 million video views per month. Funny or Die also produces an HBO series "Funny or Die Presents," which just concluded its second season, and Funny or Die's first digital feature film is currently in production. Funny or Die's founders are Will Ferrell, Adam McKay and Chris Henchy. Judd Apatow is also a principal partner in Funny or Die.

Nick Grad is executive VP of original programming for FX Networks. As head of original programming for FX, Grad was instrumental in the development of the acclaimed and award-winning dramas "Sons of Anarchy" and "Justified," and the acclaimed hit comedies "It's Always Sunny in Philadelphia," "Archer," and "The League." In his previous positions at the network, he spearheaded the development of the award-winning dramas "Rescue Me," "Damages" and "Nip/Tuck." Grad joined FX in 2002 after serving as VP of comedy development at Columbia TriStar, where he developed programs such as "King of Queens."

As director of media partnerships at Twitter, Chloe Sladden has spent the last two years leading a team that works with Twitter's media partners to create new and effective approaches to content creation, interactive TV, audience engagement and news reporting through the Twitter platform, with a special focus on television. She previously worked at Current TV, producing the Webby Award-winning "Hack the Debate," "Current Digs the Election" and "Current Twitters the Inauguration." She also served as a management consultant for Booz Allen Hamilton's media and entertainment practice.

David Lidsky joined *Fast Company* in March 2004 and currently serves as articles editor, producing features on such companies as Google, Zynga, and Starbucks, as well as editing *Fast Company* columnists Dan Heath, Chip Heath and Farhad Manjoo. His story "A Modern Mess," about the rise and fall of the retailer Design Within Reach, won the 2010 Deadline Club award for best business feature. In addition, Lidsky is the co-editor of *Fast Company's Greatest Hits: Ten Years of the Most Innovative Ideas in Business*, published by Portfolio. Prior to joining *Fast Company*, Lidsky worked at *FSB: Fortune Small Business* magazine and *PC Magazine*. ♦

Live Music Traditions Alive at WSVS



Dallas Wesley (baseball cap) and the Lost Highway Band perform live on the radio at WSVS as admirers listen outside the open-door studio in Crewe.

Radio station WSVS is an old white building nestled amid woods and fields along a narrow country road in Nottoway County. Pickup trucks pass by on a regular basis. Railroad tracks run nearby. A prison is just over the rise.

In other words, it's a country song waiting to happen.

Which is only appropriate.

WSVS (800 on the AM dial) has made its share of bluegrass and country music history — Lester Flatt and Earl Scruggs bivouacked here for a few months in the 1950s during their exile from Nashville — and now those who love the venerable station hope that history will secure its future.

"I believe in this," said station manager Chris Gowin, 38, who left a district manager's job in retailing to work for his hometown station because it made him happy. "Following my dream" is how he describes it, though it's a path with no shoulders and frequent potholes.

"We're always in danger of shutting down," he said. "We operate on a shoestring budget, but we always come

through. Things always happen that we're able to keep this station moving."

Gowin's vision is to turn the station into a working museum with an emphasis on live performances, which have played such a big part in WSVS' history. Every Saturday afternoon, in the same studio where Flatt and Scruggs played, country and bluegrass bands perform on "High Noon Hoedown," a program that serves as a showcase for local and occasionally national talent and as free entertainment for anyone who wants to drop in.

On a recent Saturday, music fans ambled into the station and made themselves at home to hear Dallas Wesley and the Lost Highway Band, which plays a lot of Hank Williams music as well as original tunes. A few stood in the control room, watching the band through a window, while others sat on a sofa or folding chairs in the small lobby, tapping their toes as music spilled through the open doorway to the Flatt and Scruggs studio.

"It's a real pleasure to play in a place like this," Wesley said after the show.

"We're playing country music in the style that's come through this place. It's a bit of a head trip."

WSVS has been broadcasting from Crewe since 1947. The station was moved to its current location in the early 1950s, an era when a favored amenity was a bomb shelter. This one is across the field from the station, over by the transmission tower, and plans call for it to be spruced up for visitors. Those plans also include the ditching of an old trailer on the side of the station, which could lead to the designation of WSVS as a historic landmark and the eventual construction of an amphitheater for outdoor shows.

"There aren't many places like this anymore, and this story needs to be told," Gowin said of the tourism angle. "I'd like as many people to come and see this as possible."

To that end, a nonprofit organization, Virginia Museum of Radio Entertainment, has been created to operate the station and develop it as a historical attraction so tourists can come by and see the collection of original transmitters,

Musicians of some fame and others of none at all come to pay homage and to play. The only difference now is their tunes travel well beyond Petersburg and Brookneal because programs stream over the station's website.

microphones and vinyl records.

But Gowin and a small group of volunteers hope WSVS will attract interest for continuing to be what it always has been: a down-home radio station. The station has a daytime reach of a 75-mile radius around Crewe with a potential listening audience in excess of 2 million. But at its heart, WSVS is a neighbor down the street with familiar voices playing music and telling stories, friends coming through the radio who provide a community connection. Listeners buy, sell and trade items on its daily "Coffee Chat" program, but over the years they also have helped one another when someone is out of work or otherwise in need. Neighbor helping neighbor.

"That has never changed," Gowin said.

If WSVS ever ceased operations, said longtime on-air host Mel Payne, it would be like a death in the family.

"We are part of the families that live here," Payne said. "It would be a huge loss."

Payne grew up a half-mile from WSVS and, as a kid, rode his bicycle to the station to mow the grass. In the late 1950s, when Payne was a teenager, he was offered a weekend job operating the sound board and spinning records. Those were the days when WSVS played everything from country and bluegrass to Frank Sinatra, The Platters to Mantovani.

"That's the way all of these stations were in those days," Payne said. "You didn't have these specialty stations."

Payne took a break of about four decades, joining the Air Force and then spending 31 years working for United Airlines in customer service around the country before coming home to Southside. He now lives in Victoria and hosts a

bluegrass show on weekdays and "High Noon Hoedown" on Saturdays.

The most famous WSVS personality was probably Jody Rainwater, who had been Flatt and Scruggs' booking agent and bass player in Tennessee. Rainwater, who had settled in Virginia at WSVS, was the connection that brought them to tiny Crewe when they were having trouble getting gigs around Nashville. They spent four months in Crewe, playing a couple of live shows on WSVS each day and taping two others to send back to WSM in Nashville. The rest of the time, they traveled the countryside performing at schoolhouses, under tents and on the Old Dominion Barn Dance in Richmond. Their business dealings smoothed out, Flatt and Scruggs returned to Nashville in early 1955, and their career took off. But they left a serious mark in Crewe, including the WSVS studio where they performed, which has become something of a shrine.

Musicians of some fame and others of none at all come to pay homage and to play. The only difference now is their tunes travel well beyond Petersburg and Brookneal because programs stream over the station's website. It's not unusual to hear from listeners in Europe, said Bobby Wilcox, a member of the VMRE board.

One thing hasn't changed, though: Live radio can be a scary thing.

"Because once it rolls, there's nothing you can do about it," Gowin said with a laugh a few minutes before a recent Saturday "Hoedown." "But it's also a very beautiful thing because you don't know what's going to happen. It's very much like those grand old radio shows of the past." ♦

Article courtesy of Bob Brown and Bill Lohmann of the Richmond Times-Dispatch.

FCC Releases New Data on Internet Access, Local Telephone Competition

The Federal Communications Commission has released its latest reports on Internet access service connections and telephone subscribership in the U.S. Titled Internet Access Services and Local Telephone Competition, the two reports are based on data submitted by carriers every six months on FCC Form 477. The reports track changes at the state and national level in the number of subscribers to Internet access service in 72 different combinations of speed tiers, and the number of wireline, mobile and interconnected Voice over Internet Protocol (VoIP) telephone subscribers. Both reports include data collected by the FCC through June 30, 2010.

Highlights from the Internet Access Services report include the following:

- 60% of connections were slower than the benchmark 4 megabits per second (Mbps) download speed identified by the FCC as the minimum bandwidth generally required to accommodate today's uses: high-quality voice, data, graphics, and video.
- Growth of fixed broadband service appears to have flattened at 1% in the first half of 2010, to 82 million connections.

Highlights from the Local Telephone Competition report including the following:

- Interconnected VoIP grew by 21% between June 2009 and June 2010.
- Conventional switched access lines (i.e., traditional wireline telephone lines) decreased by 8% between June 2009 and June 2010.
- 28% of all residential wireline connections were interconnected VoIP as of June 2010.
- An estimated 77% of interconnected VoIP subscribers received service through a cable provider.
- The number of subscriptions to wireless phone service grew by 5% in the year.

The Commission in February began considering reforms to its Form 477 program, including procedural improvements to reduce the lag between data collection and publication. Reply comments are due on or before April 14. ♦

What Do a Cat's Paw, a Felon and an Exempt Employee All Have in Common?



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

It will come as no surprise to those employers that have been following labor and employment law trends that the Obama administration wants to grant employees more substantive rights and increased access to the court system. Surprisingly though, many significant changes have gone largely unnoticed because the Administration has tapped several agencies with the responsibility of instituting new policies or rules designed to further the Administration's goals. Adding insult to injury, the U.S. Supreme Court (a usually conservative bunch) recently joined the federal agencies in granting employees increased rights to sue their employers.

What is a "Cat's Paw," and Why Should You Care?

For several years federal courts around the country have been split on whether employees may use the so-called "cat's paw" theory of liability to successfully sue their employers for unlawful discrimination or retaliation. What is the cat's paw? Typically, employees suing for discrimination must prove that their employer unlawfully discriminated against them with regard to some aspect of their employment. Usually, the

employer's "decision maker" is alleged to have had a discriminatory motive for the challenged decision. If that is proven true, the employee usually prevails; if not, the employer prevails.

The "cat's paw" theory introduces a third party into that equation. Under this theory, a lower-level manager or supervisor holds an unlawful discriminatory motive, but does not possess the authority to affect any change to the employee's terms or conditions of employment. However, the manager or supervisor influences or "duplicates" the employer's ultimate "decision maker" (i.e., a higher level manager) into taking action against the employee by feeding him false, misleading, or inaccurate information about the employee.

On March 1, 2011, the U.S. Supreme Court resolved the circuit split by approving the "cat's paw" theory of liability (*Staub v. Proctor Hospital*). In that case, Vincent Staub, a hospital employee was also a member of the Army Reserves. He was therefore obligated to attend training on the weekends and serve two full weeks during each year. The employee's immediate "supervisor," who was in charge of scheduling shifts, along with the head of Staub's department, Michael Korenchuk, did not like Staub's military commitment, and they began scheduling him to work weekends, which created

conflicts with his Army obligations.

Not long after, Staub received an order from the Army to report to "soldier readiness processing," a preparatory session leading potentially to active deployment. He was promptly issued a written warning for disregarding his job duties (which Staub disputed), and was instructed to report to Korenchuk whenever he had finished an assignment.

A few months later, Staub had completed a job around noon and went to report to Korenchuk, but he was not in his office. Staub then left Korenchuk a voice-mail as to his whereabouts and went to lunch. When Staub returned, Korenchuk confronted him and demanded to know where he had been. When Staub told him he had gone to lunch, Korenchuk went directly to the Vice President of Human Resources, told her that Staub had been previously warned but had today failed to report his whereabouts, as he had been previously instructed. As such, the VP of HR terminated Staub's employment – completely unaware of the hostility his immediate supervisors harbored toward his military service.

The U.S. Supreme Court found that the hospital had unlawfully discriminated against Staub in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994

("USERRA"). In reaching its decision, the Court cautioned that "if a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA." In short, if a lower level manager who holds a discriminatory motive can persuade an unsuspecting executive to take action against an employee (even if that executive has no discriminatory motive), then the employer will be liable.

While the Staub decision was limited to the context of USERRA, employers are advised that the "cat's paw" theory of liability will likely be applicable to other anti-discrimination statutes that prevent discrimination on the basis of sex, race, gender, religion, age, disability, etc. Thus, going forward, employers should use great care in automatically crediting the recommendation of an employee's immediate supervisors and take extra precautions to make sure the rationale underlying an employment decision is legitimate and not based on unlawful discriminatory motives.

Don't Be Too Quick to Weed Out the Felons

To many employers it seems axiomatic that if you have a job applicant who has committed a serious felony, he should not be hired. This makes some intuitive sense, because applicants with no criminal history are probably less likely to cause problems than those applicants who have past felony convictions. Employers have also long been bolstered by the fact that our federal anti-discrimination laws do not expressly prohibit discrimination based on conviction records.

However, the Equal Employment Opportunity Commission ("EEOC") recently issued some informal guidance strongly

cautioning employers that it is illegal to use a prospective employee's past conviction records, even for serious felonies, as an "absolute measure" as to whether the applicant should be hired. The EEOC's position, while a bit controversial, is not all that surprising when you look at the underlying rationale. Federal law does not prohibit discrimination against felons, but it does prohibit employment discrimination based on race. In this country, African Americans and Hispanics make up a disproportionate percentage of felons. A practice of excluding felons would have the unintended consequence of routinely denying employment to those two racial groups. The EEOC has therefore taken the view that denying employment to felons (solely because of their convictions) would amount to race discrimination – which is unlawful under Title VII of the Civil Rights Act of 1964, and many state and local laws.

The EEOC guidance does not, however, prevent convictions from being considered at all; it simply prevents employers from using conviction records as a bright line, litmus test for excluding applicants. Thus, employers are still free to weigh conviction records against such things as (1) the nature of the job, (2) the nature and seriousness of the offense, and (3) the length of time since the conviction(s).

However, employers should also take care to understand the state laws where they do business. Many states limit the use of arrest and/or conviction records that may be used in the hiring process. And the federal Fair Credit Reporting Act ("FCRA") imposes several obligations on employers who wish to conduct an applicant's criminal background or credit history, including disclosing the information to the applicant before taking any adverse action based on the contents of the records.

A Written Job Analysis May Soon Be Required for Your Exempt Employees

It is no secret that the U.S. Department of Labor has recently begun to crack down on employers' misclassifying their employees as "exempt," when they are really "non-exempt." The reason for the crackdown is, in short, overtime pay. Exempt employees are not entitled to overtime pay, while non-exempt employees must receive overtime pay for hours worked in excess of 40 per week (under the federal Fair Labor Standards Act). Misclassifying non-exempt employees as exempt employees results in those employees being denied overtime pay they were otherwise entitled to receive.

To assist with its wage and hour crackdown, the DOL recently proposed a rule that would require employers to conduct a written classification analysis for each exempt employee in its organization. The employer would have to provide this written analysis to the employee and keep a copy in its corporate files in the event of a DOL audit or investigation. The same analysis would also have to be conducted for individuals whom employers classified as independent contractors as opposed to employees.

While the proposed rule may not become final for some time, employers are strongly encouraged to begin the internal audit process now. Reviewing exempt employee job duties and preparing the necessary analysis for each employee will take a significant amount of time and effort, which should not be put off until the rule becomes final. If your organization is not familiar with how to conduct a proper internal wage and hour audit or how to properly classify employees as exempt or non-exempt, you should seek the assistance of experienced labor and employment counsel. ♦

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MARCH JOB BANK

SUBMIT JOBS

Submit to VAB Newsletter:

- Please e-mail the listing directly to marci.malinowski@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

Account Executive Harrisonburg, VA

Responsibilities include preparing promotional plans, prospecting new clients, developing and maintaining relationships with existing clients, scripting commercials, and collecting payments. Qualified candidates must be self-motivated with excellent verbal and written skills. This position requires ability to calculate figures. Candidate must have their own vehicle with a valid driver's license and state-mandated auto insurance. Computer skills are necessary and experience with Microsoft Word, Excel and Publisher are preferred. High school diploma, college degree preferred. Send resumes to: HarrisonburgSalesTeam@ClearChannel.com EOE.

Morning Air Personality Fredericksburg, VA

WFLS is currently casting our morning show. Bring your natural communication, flawless format execution, and creative content ideas to this country music powerhouse. This market is ripe for morning show domination and a signal that puts you in D.C. as well means the potential is limitless. We're a locally owned and managed company with a terrific compensation package and all the tools you'll need to win. Rush samples of your best work to the StarRadio Group, 616 Amelia Street, Fredericksburg, VA 22401 or send email to jobs@freelancestar.com. EOE.

Account Executive Winchester, VA

The new WXVA, Winchester, VA, is now interviewing for two full time account executives. Must be aggressive, result oriented and ambitious to market WXVA in the local, retail business community. Candidate should have some sales experience. Radio sales experience preferred, but not required, as we will train in radio sales. Salary and commission compensation. Excellent driving record is required. Please send cover letter and resume to: hr@wxva.com. EOE.

Station/Sales Manager/ Morning Air Personality Winchester, VA

WXVA needs a real radio person who can sell both on and off air. WXVA will be a promotions and local involvement driven radio station, station manager must be locally involved, inventive and bold in selling and merchandising the station. Compensation depends on ability and experience, structured around a base salary, commission on sales and bonuses based on station performance. Excellent driving record is required. Please send cover letter and resume to: hr@wxva.com. EOE.

Traffic Copy Editor Roanoke, VA

This position is responsible for inputting commercial copy instructions, maintaining tape library, as well as maintaining accuracy of the station's

master logs by checking program accuracy, late additions, break times, and advertiser competition. Computer experience required. This position requires attention to detail, strong organizational skills, and the ability to meet daily deadlines. Pre-employment background and drug screen required. Send cover letter and resume to: Human Resources ATTN: Traffic Position WDBJ Television, Inc., 2807 Hershberger Road Roanoke, VA 24017 or send email to: jobs@wdbj7.com. EOE.

Video Editor FT Lynchburg, VA

The Video-Journalist is primarily responsible for gathering news by recording satellite and other remote transmissions and editing video tape. Candidate should be familiar with effective camera shooting techniques and display high journalistic standards. Must have good communication skills, work well with others and take direction from management. Advanced education in the field of Broadcast Journalism or equivalent broadcasting work experience. Must have a valid Virginia driver's license. 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., Mon - Fri. No phone calls please! EEO/M/F.

News Anchor/Reporter Roanoke, VA

We are looking for a leader, not just on the air for the viewers, but also in the NEWS7 newsroom. Expectations include anchoring main newscasts and frequent reporting, as well as daily contributions to the Web and other digital platforms. Successful candidate must be able to coach fellow journalists and represent the organization at community events. Candidates should have five years experience in journalism and a valid driver's license with a good driving record. Background and pre-employment drug screen required. Send printed resume and DVD or tape to: Amy Morris News Director WDBJ Television 2807 Hershberger Rd. Roanoke, VA 24017. EOE.

Sports Anchor/Reporter Richmond, VA

NBC12 seeks Sports Anchor/Reporter. Successful candidate will have 2 years experience shooting and packaging stories. New media literacy required. Send resume, non-returnable demo tape and cover letter with salary requirements to Nancy Kent Smith, News Director, NBC12, P. O. Box 12, Richmond, VA 23218. EOE M/F/H/V Drug & MVR Screen required.

General Sales Manager Richmond, VA

WWBT/NBC12 is currently recruiting for a General Sales Manager. Candidate must possess strong leadership, motivational and sales skills along with a proven track record of success. The candidate must have the ability to lead an

experienced sales team in developing new business on the digital tiers, on-line and on the mobile platform. Candidates must have at least 5 years of sales management experience; former GSM experience a plus. Send cover letter, resume and salary requirements to: Judy Gibson, Human Resources Director, NBC12, P. O. Box 12, Richmond, VA 23218 or email jgibson@nbc12.com. Drug screen and MVR check required. EEO M/F/H/V.

Senior Network Engineer Norfolk, VA

WHRO is seeking a Senior Network Engineer to be responsible for high level engineering support for analysis, design, implementation, maintenance and documentation of WHRO servers and infrastructure for both internal LAN and external LAN. Four year college degree in a computer discipline or related field and/or technical certification, or six years of related work experience. A broadcasting background and experience with non-profit and educational institutions are desirable. Interested candidates should submit a cover letter, resume, and salary requirements to: WHRO, Attn: Sherby Wilks; 5200 Hampton Boulevard; Norfolk, VA 23508. Information may be sent by regular mail, e-mailed to sherby.wilks@whro.org or faxed to 757.451.6876. EOE.

Associate Director FT Lynchburg, VA

Responsible for in-studio production assistance, including the operation of camera, audio, character generator, etc. Assist in training and supervision of production assistants in the operation and maintenance of studio, graphics, and control room equipment. Six months experience as a Production Assistant or related production experience. A willingness to learn. Basic Control Room equipment skills preferred. Management training helpful, but not necessary. There may be some shifting of schedules during training and to fill-in for employee illness, vacation, or demanding projects. Overtime may be required in these circumstances. 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., Mon. - Fri. No phone calls please! EEO/M/F.

Chief Engineer Harrisonburg, VA

We are searching for an engineering professional to work in a modern broadcast facility. The successful candidate will be able to combine hands on approach and engineering IT management skills for a dominant full power television station in the Harrisonburg area. Ability to oversee and interact with IT based workflow in an automated environment and digital transmitter experience is required. Good communication skills in a fast paced news environment and professional appearance a must. Salary DOE. EOE.

Multi-Platform Sales Account Executive WAVY-TV10/WVBT Fox 43 TV Portsmouth, VA

Be a part of the expanding and exciting world of multi-platform marketing and join the most successful sales team in the Norfolk, VA market selling Television, Internet and Mobile advertising solutions. Applicants must have excellent

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communication, organizational, computer and follow-through skills. The ideal candidate should be competitive and goal oriented with a strong desire to succeed. Individuals must be comfortable meeting with prospects, making presentations and have a desire to help businesses grow. College degree preferred. Please send cover letter and resume to: Local Sales Manager, WAVY-TV/WVBT, 300 WAVY Street, Portsmouth, VA 23704 or jobs@wavy.com No phone calls, please. EOE.

Meteorologist Winchester, VA

TV3 Winchester is looking for a degreed and dynamic meteorologist to join our team. Candidates should possess a strong working knowledge of WSI systems and should be able to create graphics to complement a convincing and energetic weather story while maintaining a strong interaction with the news anchors. Responsibilities will also include reporting. We are looking for a natural story-teller who can find unique and compelling stories in our community. Knowledge and experience with Internet news presentation is desired. Experience with I-News and non-linear show editing and production is a plus.

Outside Sales--Account Executive Roanoke, VA

WROV/WJJS/WYYD/STEVE FM/SUNNY FM is looking for outside sales SUPER STAR to sell Radio & Online advertising in Roanoke. Sell #1 and #2 radio station in Roanoke. Previous outside sales experience and understanding of internet a must. Send resume to roanokecareers@clearchannel.com. EOE.

News Editor (PT) Roanoke, VA

We are looking for an experienced news editor to work with market's #1 morning team. This position is responsible for editing video for a fast-paced morning program. Minimum two-year technical degree preferred. Pre-employment background and drug screen required. Send cover letter and resume to: Chief Photographer WDBJ Television 2807 Hersberger Road Roanoke, VA 24017 or email: jobs@wdbj7.com.

Producer Charlottesville, VA

Top-notch small market station is looking for our next great producer. You'll have the tools needed to put together good shows in a fast paced environment that feels much bigger than our market size. Be part of our news team with all digital editing, four live trucks, sat truck and two bureaus. Rush resume, NBC 29 application available for download at www.nbc29.com, and the last newscast (DVD) you produced to: HR Manager 503 E Market St. Charlottesville, VA 22902 No phone calls please. Resumes received without NBC 29 application will not be considered. EOE.

Adult Communicator Johnson City-Kingsport-Bristol

Holston Valley Broadcasting Corporation in the Johnson City-Kingsport-Bristol Market of East Tennessee is seeking an Adult Communicator to host morning drive on Classic Hits WVEK. The ideal candidate must have a positive attitude on and off the air, the ability to create compelling content and build loyalty in our target demographic. A minimum of 3 years on-air experience and a proven track record of success required.

Great communication skills along with production and imaging, music scheduling and social networking skills will help the right candidate win this opportunity. We offer an excellent benefits package with health, dental, and life insurance, and a 401(K) plan. Apply in strict confidence with your resume and air check to Mark Baker 222 Commerce Street, Kingsport, TN 37660 or email it to hr@hvbgroup.com. No calls please. EOE.

Account Executive Norfolk, VA

Saga's Tidewater Communications, LLC in Norfolk/Virginia Beach, is searching for talented and experienced Sales Representatives to join our team. We offer great broadcast facilities, an outstanding work environment based and have the tools you need to win. Successful candidates for this position will thrive on selling new business and growing agency accounts. Two years experience selling Radio and Interactive advertising required and a proven track record of growing local direct business. We offer highly competitive pay, a solid benefits package and unlimited opportunities for the right individuals. College Degree preferred. Send cover letter and resumes to Diane Hubel, VP/GM at dhubel@tciradio.net. EOE.

Account Executive Richmond, VA

WRIC is looking for an energetic self starter with good presentation skills to join our sales team. Extensive training and support will be provided. The successful candidate will have the motivation and desire to be the best and will be willing to develop new business and work in a challenging fast paced environment. An outside sales background and college degree 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. NO phone calls please. EOE.

Director of Digital Sales Richmond, VA

Primary responsibility is to grow digital ad revenue on wric.com and related sub domain sites. Work with GM/GSM/LSM to establish goals and strategy to grow digital revenue. Develop new initiatives based on client needs and new technology. Create and present digital marketing campaigns to generate results for local clients. Send resume to: WRIC TV8 Personnel Department, 301 Arboretum Place, Richmond, VA 23236-3464, or fax your resume to 804/330-8881, or email your resume to personnel@wric.com. NO phone calls please. EOE.

Internships Norfolk, VA

Entercom Norfolk offers an opportunity for students to apply classroom theory to practical work experience. Our internship program allows students to experience firsthand the reality of working in the radio broadcasting industry while testing their creative talent, exercising their analytical skills and increasing their understanding of broadcasting operations. Internships are available year-round, 12-15/week. Interns must be enrolled in a College or University and receiving college credit and are expected to obtain/complete any forms necessary to receive credit. Internship are available for WWDE, WNVZ, WPTE, WVKL in the following departments: Promotions, Programming, Production, Sales, Business Office & Web Development. INTERNS ARE NON-PAID POSI-

TIONS. Please apply online at www.entercom.com and click on "Careers". EOE.

Account Executive Norfolk, VA

Entercom is seeking AE's for WWDE, WNVZ, WPTE, WVKL. We have the latest tools and technology, the most knowledgeable management and are known for offering the best work environment for selling radio advertising in the industry. Successful candidates are experts in strategic targeting of clients, relationship building and marketing. Must have a successful track record of new business development and a proven track record in meeting/exceeding defined sales goals. Apply online at www.entercom.com and click on "Careers". EOE.

On Air Personalities Norfolk, VA

Entercom Norfolk is looking for future air personalities both full and part time. 3 to 5 years experience is necessary for full time positions and some experience is necessary for part time positions. Full time air personalities will also be expected to be proficient in public appearances, voice work and commercial production. Apply online at www.entercom.com and click on "Careers". EOE.

Part Time Promotions Assistant Norfolk, VA

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

Account Executive Washington, DC

ABC 7/WJLA in Washington DC has an opening for an experienced Account Executive. New direct business development, while juggling multiple sales initiatives, must be your passion and your strength. The right candidate will bring strong communication and presentation skills, and experience in developing both television and online revenue. A personal drive to succeed and the willingness to put the time in are a pre-requisite. We have all the tools you need and a very supportive environment to help you become a sales star. Minimum two years proven sales success is required. Send cover letter and resume to HR-AE@wjla.com.

Senior Vice President/Chief Operating Officer Charlotte, NC

New broadcasting group seeks an outstanding revenue-focused Senior Vice President/COO to oversee the company's radio stations operations. Ideal candidate will be a dynamic team leader with positive record in programming, sales, marketing and financial leadership in multiple platform media. The winning candidate must have strong revenue and audience development skills. Broadcast experience as DOS/GM/MM/CFO/COO. Minimum 8 years experience working in multiple platforms broadcast facilities. Please forward confidential resume and cover letter to robert3000cpl@hotmail.com. EOE.



Virginia Association of Broadcasters LEGAL REVIEW



Non-Discrimination Language Must Be Disclosed at Time of License Renewal

By Stephen Hartzell

A new FCC rule prohibits discrimination in the sale of broadcast time and in the sale of stations. Technically, this rule went into effect almost three years ago, on July 14, 2008. So why have stations been hearing so much about this rule over the last few weeks? The answer is because the rule requires stations to certify, at license renewal time, that their advertising contracts do not discriminate on the basis of race or ethnicity and that their advertising contracts contain nondiscrimination clauses. And, of course, the first wave of license renewal applications—which includes Virginia radio stations—are due to be filed by June 1, 2011. (Noncommercial stations will be permitted to select “not applicable” on their license renewal applications since they are not permitted to sell advertising time.) Thus, the FCC is now getting the word out to broadcasters about this important compliance issue. To that end, the FCC has, most recently, released an “Enforcement Advisory” dated March 22, 2011.

Here is the Enforcement Advisory’s discussion of the nondiscrimination requirements:

What is the new nondiscrimination in advertising certification requirement about? As the Commission stated in the Promoting Diversification of Ownership in the Broadcast Services Report and Order [adopted in December 2007], discrimination has no place in the broadcast industry. Accordingly, in that Order, the Commission required commercial broadcasters to certify in their renewal applications that their advertising contracts contain nondiscrimination clauses. In adopting this requirement, the Commission addressed reports that some advertising contracts contain “no urban/no Spanish” dictates that are intended to minimize the proportion of African American or Hispanic customers patronizing an advertiser’s venue—or dictates that presume that African Americans or Hispanics cannot be persuaded to buy an advertiser’s product or service.

What are licensees required to do? Licensees of commercial broadcast stations must certify that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain nondiscrimination clauses. A renewal application cannot be submitted without completion of the certification. Form 303-S contains both a “yes” and “no” box for the certification requirement to provide licensees that are unable to make an affirmative certification an opportunity to explain the reasons for noncompliance. If the response to the nondiscrimination certification question on the form is “no,” the licensee must attach an exhibit identifying the persons and matters involved and explaining why the noncompliance is not an impediment to

a grant of the station’s license renewal application. A “no” answer and associated explanation will be considered by the Commission in determining whether to renew the license. Licensees must have a good faith basis for an affirmative certification and a reasonable basis for believing that factual information provided to the Commission is truthful and accurate. For example, a licensee that uses a third party to arrange advertising sales is responsible for exercising due diligence to ensure that the advertising agreement contains the nondiscrimination clause and does not discriminate on the basis of race or ethnicity. Furthermore, a broadcaster that learns of a violation of a nondiscrimination clause while its license renewal application is pending should update its license renewal application so that it continues to be accurate. A misrepresentation in an application filed with the Commission could result in the initiation of license revocation proceedings.

To date, the Enforcement Advisory is probably the most discussion the Commission has given to the issue, but, unfortunately, as our discussions with broadcasters have revealed, a number of ambiguities still remain. Nonetheless, the Enforcement Advisory makes clear that the Commission takes very seriously these requirements, and, certainly, broadcasters should too.

To make the license renewal certification, stations will need to include nondiscrimination language on written materials that document the agreement between the station and the advertiser. Compliance with the new nondiscrimination rule poses special challenges for broadcasters that do not use formal advertising contracts. For example, some stations may use written proposals that buyers sign and return to the sales department. Other stations may orally agree to sales terms without routinely exchanging written proposals or order confirmations. Yet other stations may simply receive an insertion order from an advertiser by fax. In the first case, we recommend that broadcasters include on the written proposal a statement that the station does not discriminate in the sale of broadcast time. In the latter cases, we recommend that stations include a nondiscrimination statement on any written materials that are sent to the advertising client—for example, on invoices, promotional materials, rate cards, confirmation faxes or e-mails, or any other written materials that are distributed to buyers.

The inclusion and distribution to advertisers of nondiscrimination language necessarily varies from station to station based on the nature of written materials that are exchanged. Stations should consult with their communications counsel in order to ensure that they are using appropriate nondiscrimination language to comply with the Commission’s rule and that they will be able to make the required certification at license renewal time. ♦

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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