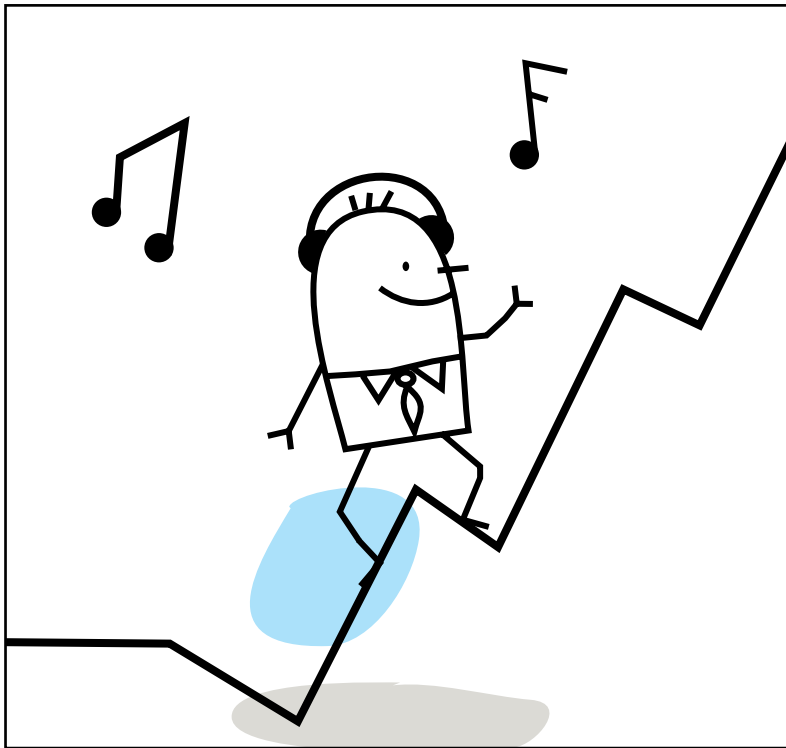


NextRadio Seeks Next Steps In Changing Headphone World



Apple's decision to axe the headphone jack from its new iPhones has raised questions about the prospects of NextRadio adding Apple products into its ecosystem, which relies on the headphone wire as an FM antenna. New numbers showing a surge in Bluetooth headphone sales raise the specter that other handset manufacturers may follow Apple's lead in eliminating the 3.5-millimeter headphone jack.

Wired headphones

still make up a vast majority of headphone sales in 2016, according to data released by NPD Group and reported by Digital Music News. But June marked the start of a shift. According to NPD, it was the first month in which Bluetooth-enabled, wireless headphone revenues surpassed those of wired, more traditional headphones.

"While the headphone category saw a 7% year-over-year increase in dollar sales for the first half of 2016, Bluetooth headphones saw double-digit growth with a 42% year-over-year increase in dollar sales for the first half of the year," the NPD report says.

That figure includes earbuds, which are also starting to go wireless, beginning with Apple's new AirPods set to hit the market in a few weeks.

Digital Music News calls the growth in wireless headphone sales "the real reason" for Apple's decision to ditch the headphone jack in its forthcoming iPhone 7 and iPhone 7 Plus models and predicts that "cumbersome" wired headphones will be "potentially gone in 5-10 years" in a world of headphone jackless phones. Already it has observed a few Android models that have removed headphone jacks in favor of USB-C ports playing a dual role. "USB-C could become Android's equivalent of the Lightning jack, with a headphone jack-free mobile world emerging in just a few years," Digital Music News says.

NextRadio officials seem nonplussed by Apple's decision and say there are short-term work

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Upcoming Events:

October 13, 2016

VAB Richmond Regional Meeting
Westin Richmond
Richmond, VA

October 20-21, 2016

VAB Best of the Best Session #1
Omni Hotel
Charlottesville, VA

October 27-28, 2016

VAB Board Retreat
Keswick Hall
Charlottesville, VA

June 22-24, 2017

VAB 80th Summer Convention
Hilton
Virginia Beach, VA

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around and long-term solutions. “It’s no big deal,” NextRadio president Paul Brenner said during an NAB Pilot presentation last week in Washington, DC. “It wasn’t news for us. We’ve known about it for quite a while.”

Brenner and Emmis CEO Jeff Smulyan note that headphones can still be plugged into the new iPhone 7’s Lightning Port, using an adapter or Lightning-based headphones. “The phone still has a connector,”

Brenner says. “It still has a wire and it can still be an antenna.”

NextRadio is also working on its own long-term solution—an internal antenna that would make wired headphones unnecessary for FM radio reception. But that’s still a way’s off. It’s also working on a way that wireless headphones could function as an FM antenna, Smulyan said.



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

Position	Locations	Type	Department	Organization	
Director	Richmond	Full Time	News	WWBT, Inc.	9/26/2016
News Specialist	Richmond, VA	Part Time	News	WWBT, Inc.	9/26/2016
Account Executive	Fredericksburg	Full Time	Sales	Centennial Broadcasting II, LLC	9/23/2016
Traffic Director/ Client Services Administrator	Charlottesville	Full Time	Sales	wrrn fm	9/19/2016
MORE ON-AIR POSITION	Harrisonburg, VA	Full Time	On Air	Harrisonburg Radio Group	9/16/2016
Creative Services Director	WDBJ - Roanoke, VA	Full Time	Promotion	WDBJ Television, Inc.	9/13/2016
Bureau Reporter	WHSV	Full Time	News	WHSV-TV	9/10/2016
Assignment & Web Producer	Roanoke	Full Time	(Other)	Nexstar Broadcasting	9/7/2016
Local Sales Manager	Richmnd, VA	Full Time	Sales	WUPV-TV	9/6/2016
Account Exective	WHSV	Full Time	Sales	WHSV-TV	9/1/2016
Photojournalist-SAT Truck Operator	WDBJ - Roanoke, VA	Full Time	News	WDBJ Television, Inc.	9/1/2016
Reporter/MMJ	Richmond, VA	Full Time	On Air	WWBT, Inc.	8/30/2016
Multimedia Journalist	Lynchburg	Full Time	News	Sinclair Television Stations, LLC	8/26/2016
Cheif Engineer	Richmond, VA	Full Time	Engineering	Summit Media Group	8/26/2016
News Editor	Lynchburg	Full Time	News	Sinclair Television Stations, LLC	8/26/2016
Sports Director	Roanoke	Full Time	News	Nexstar Broadcasting	8/25/2016

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LEGAL REVIEW

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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EEOC Issues New Enforcement Guidance Regarding Retaliation Claims

By John G. Kruchko and Nancy V. Holt*

Executive Summary: For the first time since 1998, the Equal Employment Opportunity Commission (“EEOC”) has issued its final Enforcement Guidance regarding retaliation claims. The 76-page “Enforcement Guidance on Retaliation and Related Issues” emphasizes the agency’s broad interpretation of the protections afforded to employees who participate in EEO proceedings or complain about discriminatory practices.

Overview of Guidance. Nearly 45 percent of all EEOC charges include a claim for retaliation, making it the most frequent basis of alleged unlawful treatment. In an effort to address this trend, the EEOC published a new Enforcement Guidance regarding retaliation claims, as well as a user-friendly Questions-and-Answers reference guide and a Small Business Fact Sheet.

The Enforcement Guidance provides a comprehensive summary of the law regarding the retaliation provisions in Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Rehabilitation Act, the Equal Pay

Act, and the Genetic Information Nondiscrimination Act. The Enforcement Guidance also includes real-world examples aimed at helping employers identify and prevent more nuanced examples of retaliation.

Employers should take particular note of the following:

- **EEOC Emphasizes “Expansive Definition” of Protected Activity.** The EEOC’s final Enforcement Guidance emphasizes that the term “protected activity” should be interpreted broadly. In particular, the EEOC emphasized that the so-called “participation clause” (which prohibits retaliation against persons filing, testifying in, or otherwise participating in an EEO investigation or proceeding) protects employees who file or participate in an employer’s internal complaint or investigation process (not just those who file or participate in matters before the EEOC). Moreover, “participation” activity remains protected even if the underlying discrimination allegation is not based on a reasonable, good faith belief that a violation occurred.



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The EEOC also followed the National Labor Relations Board's lead and emphasized that protected activity often includes communicating with managers and co-workers to complain or ask about compensation.

• **Broad Definition of "Adverse Employment Action."** The EEOC also emphasized that unlawful retaliation encompasses not only tangible employment actions (e.g., termination, reduction in pay, demotion, etc.) but also any action that reasonably deters an employee from engaging in protected activity. This may include changing an employee's work schedule, threatening reassignment to a different job classification, scrutinizing an employee's work more harshly than the work of others, and refusing to investigate an employee's complaints. Additionally, in a sharp expansion from prior trends, the EEOC suggests that adverse actions can include activities that aren't work-related and take place outside of work. Moreover, the EEOC now appears to take the position that an adverse action could be taken against a third party who is closely linked to a complaining employee.

• **Causation.** The EEOC's new Enforcement Guidance also advocates a more lenient causation standard. The EEOC opined that a "convincing mosaic" of circumstantial evidence may be all that is necessary for employees to prove that they suffered an adverse employment action because they engaged in protected activity. Perhaps most troubling for

employers, the Enforcement Guidance suggests that an employee could go back years into his or her employment history in creating this "convincing mosaic."

Employers' Bottom Line: To prepare for the likely surge in retaliation claims prompted by the EEOC's new guidance, employers should:

- 1. Update their anti-retaliation policies as necessary, including adding real-world examples and explicitly stating that: a) retaliation is prohibited by the organization, b) will be grounds for disciplinary action and c) employees are required to report accusations of retaliation. The policy should include multiple options for reporting retaliation to ensure an employee is not required to make a report to the person accused of retaliation.**
- 2. Provide training to all managers and non-supervisory employees on a regular basis regarding the prevention of retaliation.**
- 3. Immediately notify an employee accused of discrimination that retaliation is prohibited and consider reassigning him/her to prevent the possibility of any retaliation.**
- 4. Proactively follow up with employees who have complained of discriminatory treatment, either internally or to a federal or state agency, to ensure there are no concerns regarding retaliation.**

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





The Virginia Association of Broadcasters would like to invite you to join us for a quick presentation and update regarding your Association and its activities as well as a social hour to get to know other broadcasters in your market.

**Please join us on Thursday, October 13
5:30 p.m. - 7:00 p.m.**

**The Westin Richmond
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Open to all station employees, with specific content for all department heads, managers and account executives.

We look forward to seeing everyone!

Please RSVP to Christina Sandridge at (434) 326-9815
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