

Whiting: Anytime, Anywhere Video Still Primarily Means Traditional TV at Home

Nielsen Vice Chairman Susan Whiting plans to tell the Senate Commerce Committee Tuesday, April 24, that while video consumers increasingly are watching video on the best screen available, on more devices and at more locations, the vast majority of that anytime, anywhere consumption (91%) is still on traditional TV in real time.

And while tablets and smart phones have fueled an explosion in digital access to video, there are still a record number of TV sets in American homes.

Whiting's written testimony, a copy of which was obtained by B&C/Multi, is based on Nielsen's latest *State of the Media: Digital Consumer Report*.

While 166 million Americans watched video online in October 2011, and more than 117 million accessed the 'net through mobile, she points out that is still mostly in short bursts rather than large blocks of time.

The average monthly total of viewing on mobile devices and computers is a little under nine hours, while the average viewer watches a whopping 146 hours-plus of traditional TV on one of those record number of TV sets.



YouTube and Netflix dominate online video viewing, together accounting for over half 56% of the 4 hours, 31 minutes of average streaming video per month.

She points out that 33.5 million mobile phones now watch video on their phones, up more than a third (35.7%) in only the past year. She concludes that "consumers are saying unequivocally that online video will continue to play an increasingly larger role in their media choices."

Whiting is joining IAC's Barry Diller and other execs to talk about the implications of the migration of video from traditional TV to the 'net. ■

Article courtesy of John Eggerton from Broadcasting & Cable.

Inside

- 2** Court of Appeals Issues Injunction of the NLRB's Posting Rule
- 2** WVTF Public Radio, RADIO IQ Claim Five Awards in Two Prestigious Journalism Competitions
- 3** House Panel Launches Spectrum Working Group
- 3** NAB Holds Annual State Leadership Conference
- 4** HR: Social Media Assurances Remain Elusive for Employers
- 6** Job Bank
- 8** Legal Review: Equal Opportunities for Political Candidates for 2012 Political Season

Virginia Association of Broadcasters

75th Annual Summer Convention

June 21-23, 2012

Hilton Virginia Beach Oceanfront
Virginia Beach, Virginia



250 West Main Street, Suite 100
Charlottesville, VA 22902
434.977.3716 • 434.979.2439
www.vabonline.com

VAB Newsletter

Published monthly by the
Virginia Association of Broadcasters
250 West Main Street, Suite 100
Charlottesville, VA 22902
434.977.3716 • 434.979.2439 (f)
www.vabonline.com

PRESIDENT

Francis Wood
WFLO-AM / FM, Farmville

PAST PRESIDENT

Doug Davis
WAVY-TV / WVBTV, Portsmouth

PRESIDENT-ELECT

Bob Willoughby
WKHK-FM / WMBX-FM /
WKLR-FM / WDYL-FM, Richmond

SECRETARY/TREASURER

Brad Ramsey
WAHU-TV / WCAV-TV /
WVAW-TV, Charlottesville

EXECUTIVE DIRECTOR

Douglas Easter

ASSOCIATE ADVISORY

Michael Guld
The Guld Resource Group, Richmond

BOARD MEMBERS

Districts 1 & 2

Charlie (Charles) Russell
WESR-AM / FM, Onley

Lisa Sinclair

WNIS-AM / WNOB-FM /
WROX-FM / WTAR-AM /
WUSH-FM, Norfolk

Tod Smith

WVEC-TV, Norfolk

District 3

Linda Forem
WCDX-FM / WKJM-FM /
WKJS-FM / WPZZ-FM /
WTPS-AM, Richmond

Stephen Hayes

WTVR-TV, Richmond

Don Richards

WVBT-TV, Richmond

Districts 4 & 5

Dennis Royer, Sr.
WBBC-FM / WKLTV-AM, Blackstone

Districts 6 & 9

George Kayes
WSET-TV, Lynchburg

Teresa Keller

WEHC-FM, Emory

Randy Smith

WSET-TV, Lynchburg

Leonard Wheeler

WFIR-AM / WSLC-FM /
WSLQ-FM / WVBE-AM / FM /
WXLK-FM, Roanoke

Districts 7, 8 & 10

John Moen

WFLS-FM / WWUZ-FM /
WVBX-AM/FM, Fredericksburg

Robert Scutari

WJLA-TV, Arlington

CONSULTANTS

Labor & Law Employment Council

John G. Kruchko, Paul M. Lusk
Kruchko & Fries, 703.734.0554

FCC/EEOC Matters

Wade Hargrove, Mark J. Prak,
Marcus Trathen, Coe Ramsey
Brooks, Pierce, McLendon,
Humphrey & Leonard, LLP,
919.839.0300

First Amendment Hotline

Craig T. Merritt
Christian, Barton, Epps, Brent &
Chappell, 804.697.4100

Court of Appeals Issues Injunction of the NLRB's Posting Rule

On April 17, 2012, the United States Court of Appeals for the District of Columbia Circuit issued an order enjoining the operation of the National Labor Relations Board's notice posting rule. The Board's posting rule was set to take effect on April 30, 2012 after a D.C. district court ruled that the NLRB had the legal authority to require employers to post notices in the workplace dealing with the collective bargaining rights of employees. See Employment Law Bulletin (3/13/2012). The lower court's decision was appealed to the court of appeals which decided that the rule should not go into effect during the pendency of the appeal.

This is the second setback inside of a week for the Board. On Friday, April 13, 2012, a federal judge in South Carolina ruled that the NLRB lacks the statutory authority to promulgate a regulation requiring employers to post notices

explaining the rights of employees to form a union. Accordingly, the court held the new rule to be unlawful. The United States Chamber of Commerce had challenged the Board's posting rule in the South Carolina court last September.

Although the injunction issued by the District of Columbia court of appeals is not permanent, it does mean that employers will not have to post the Board's notice regarding the collective bargaining rights of employees until at least September when the court of appeals will hear oral arguments and issue a ruling on the merits of the new regulation. The NLRB stated Tuesday that its regional offices will not implement the posting rule pending the resolution of the issues before the court of appeals. The Board also said it plans to appeal the ruling of the South Carolina federal court. ■

WVTF Public Radio, RADIO IQ Claim Five Awards in Two Prestigious Journalism Competitions

The stations received a national Sigma Delta Chi Award for excellence in journalism from the Society of Professional Journalists (SPJ) for the documentary "Fear of Fracking."

Reporter Sandy Hausman traveled to southwest Virginia for a first-hand look at how the controversial gas drilling technology works. She talked with environmentalists and industry sources to bring listeners a comprehensive and balanced perspective on a subject of growing concern in our region.

WVTF's entry was one of 1,700 received by the society from newspapers, radio and television stations, networks, and websites. The awards recognize outstanding work published or broadcast in 2011.

Dating back to 1932, the awards originally honored six individuals for contributions to journalism. The current program began in 1939, when the society granted the first Distinguished Service Awards. The honors later became the Sigma Delta Chi Awards.

WVTF and RADIO IQ also won four first place awards from the Radio Television Digital News Association's 2012 Regional Edward R. Murrow Awards program.

The winning entries and categories are

- ▶ Audio News Documentary: "Fear of Fracking" by Sandy Hausman;
- ▶ Audio Investigative Reporting: "Locksmith Scam" by Hausman;
- ▶ Audio Feature Reporting: "Deathly Lyrics" by Connie Stevens; and
- ▶ Audio Writing: "Seeing Trees" also by Hausman.

The regional awards program covers media outlets in Virginia, Maryland, the District of Columbia, and Delaware. Regional winners automatically become eligible for the national awards competition.

Services of Virginia Tech, WVTF Public Radio & RADIO IQ are listener-supported National Public Radio (NPR) member stations. ■

House Panel Launches Spectrum Working Group

As part of its continued efforts to find more spectrum to fuel the nation's wireless tech boom, the House Energy and Commerce Committee has announced the launch of a bipartisan task force focused on helping the federal government use the nation's airwaves more efficiently.

The Federal Spectrum Working Group "will take a comprehensive, thoughtful, and responsible look at how to improve federal spectrum use as part of our ongoing effort to make the most efficient and effective use of the public's airwaves," said Communications and Technology Subcommittee Chairman Greg Walden, R-Ore.

Walden and subcommittee ranking member Anna Eshoo, D-Calif., said the working group would be co-chaired by Reps. Brett Guthrie and Doris Matsui, D-Calif. Other members of the group include Reps. John Barrow, D-Ga., Donna Christensen, D-V.I., Diana DeGette, D-Colo., Mike Rogers, R-Mich., Steve Scalise, R-La., and John Shimkus, R-Ill.

The working group will build on the initiatives included in the spectrum legislation passed in February as part of a payroll tax cut package. The legislation authorized the Federal Communications Commission to offer incentives to broadcasters to give up some of their spectrum to wireless providers and also called on the federal government to do more to free up some of the spectrum now used by federal agencies. While pleased with the legislation, wireless industry officials have signaled that it was just a down payment and say they now have their eyes on trying get federal spectrum users to give up more of their airwaves.

"Spectrum is the key ingredient for faster, more ubiquitous wireless broadband, spurring unprecedented growth in new online applications and services," Eshoo said in a statement. "We need a comprehensive approach to spectrum policy, including an examination of how the federal government uses it." ■

Article courtesy of Juliana Gruenwald from the National Journal.

"We need a comprehensive approach to spectrum policy, including an examination of how the federal government uses it."

NAB Holds Annual State Leadership Conference



The National Association of Broadcasters held its 2012 State Leadership Conference March 12-14 at the Ritz-Carlton Hotel in Washington, D.C. The conference is an annual event where broadcasters hear from prominent federal policymakers and meet with legislators to discuss issues that affect the industry. The conference included a well-rounded program to provide a thorough update on legislative issues before Congress, as well as an opportunity to network with fellow broadcasters from across the country. ■

HUMAN RESOURCES

John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia; Kevin B. McCoy is also a Partner with the Firm. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or JKruchko@KruchkoandFries.com, or KMcCoy@KruchkoandFries.com. This article is published for general information purposes, and does not constitute legal advice.

©2012 Kruchko & Fries



Social Media Assurances Remain Elusive for Employers

Do you think Mark Zuckerberg envisioned the chaos Facebook would cause for the workplace? I mean, could he have envisioned that billions of people around the world would routinely stop performing their assigned duties and check to see what their friend or family member in Albuquerque was doing at that moment? Surely not....but who really knows? Regardless, the effect of Facebook and other social media sites (such as Twitter, LinkedIn, YouTube, Pandora, etc.) has been profound -- spawning not only an entirely new way for people to communicate, but also a whole new subset of law within the labor and employment realm. Can employers discipline employees who use social media during working time? Can employers lawfully restrict or monitor their employees' use of social media outside of work? Or can employers demand that job applicants disclose social media passwords and activity as a condition of employment? All these questions (and more) remain to be ultimately resolved one way or the other. The problem for employers is that individual states, courts, and government agencies are taking their own individual stands with respect to these issues: all of which leaves employers wondering who to listen to and how to lawfully proceed in this evolving area of the law. While there are still no hard and fast rules, it helps to look at some of the most recent events that have transpired in this area.

The Debate Surrounding the Lawfulness of Social Media Policies Continues

Over the past couple of years, the National Labor Relations Board ("NLRB") has inserted itself into the mix of decision makers when it comes to social media issues. In particular, the NLRB has taken significant umbrage with employers who craft social media handbook policies that try to limit or force disclosure of information employees generate and use via social media websites. However, the news has not been all bad for employers; some NLRB decisions have upheld the lawfulness of such policies. Yet, those decisions are pretty narrowly tailored, and the NLRB continues to issue decisions finding such policies

unlawful. At the heart of the issue is whether a social media policy that restricts or monitors employee usage restricts employees' right to engage in "protected, concerted activity" under Section 7 of the National Labor Relations Act ("Act").

In March of this year, an Administrative Law Judge for the NLRB evaluated the social media policy of GS Secure Solutions (USA), Inc. In particular, the judge considered whether two provisions were lawful: (1) a prohibition on employees commenting on "work-related legal matters" without the permission of the company's legal department; and (2) a prohibition on employees posting pictures or videos of fellow employees in uniform or while the employees were on the job.

With regard to the first provision, the ALJ found it be interpreted to prevent employees from discussing issues related to their work (such as job dissatisfaction), which is a protected activity under the Act. The ALJ therefore ruled that provision unlawful.

As for the second provision, the ALJ upheld it as permissible. The judge noted that the employer clearly has a legitimate interest in not having pictures of their employees in uniform and at work posted on social media websites, such as Facebook. The ALJ's position is particularly interesting on this point because the NLRB General Counsel memorandum published not too long ago clearly suggested that such categorical posting restrictions were likely unlawful.

The long and short of it is this -- social media policies are now an indispensable part of every company's employee handbook; but you should make sure to have your labor counsel craft or review the policy prior to implementing it. Otherwise, you may unwittingly find your company hauled before the NLRB to answer some very difficult questions about whether your policy violates your employees' federal labor rights.

Can You Ask for an Applicant's Facebook Login Information?

... and then there was the information. Aside from the lawfulness of restricting its

use, social media has presented both employers and employees with an avalanche of information....most of it fairly personal. As a result, social media provides easy access to a relatively sophisticated "background check" for job applicants. Employers can learn much about applicants' beliefs, biases, attitudes, and work history all by checking their Facebook account. Some employers have therefore simply started demanding that job applicants provide their login information as a pre-condition of employment.

Civil liberty organizations have decried the practice as offensive and detrimental to applicants' intrinsic privacy rights embedded in the U.S. Constitution. In fact, in response (in part) to a lawsuit filed in Maryland by the American Civil Liberties Union, the Maryland legislature recently became the first state in the country to pass a bill that specifically bans employers from asking applicants and employees to divulge their social media login information. The bill explicitly prevents employers from not only requiring the disclosure of such information, but also prevents an employer from threatening or taking any retaliatory action against an employee or applicant who refuses to provide such information. In fact, the bill's reach actually extends beyond the realm of social media and prevents employers from asking or requiring the disclosure of user names and passwords for "any personal account or service" you access through "computers, telephones, personal digital assistants, and other similar devices." This would seem to extend to any type of purely personal accounts that are accessed primarily electronically by the user (such as bank accounts and personal e-mail accounts). Maryland Governor O'Malley is widely expected to sign the bill into law sometime in May 2012.

How other jurisdictions may choose to resolve this issue remains to be seen. But for now, if you are a Maryland employer, it is quite likely that you will soon no longer be able to inquire into your employees or applicants login information relating to their use of purely personal websites. If your company does business in another state, keep abreast of the court decisions and the legislative process with regard to this issue, because other states are sure to follow Maryland's lead in one form or another.

One Creative Solution to Employees' Use of Social Media

Since the Internet age began, employers have encountered difficulty in trying to "rein in" their employees' internet usage at work. More problematic is that more companies are increasingly relying on internet access as a way to conduct or enhance their business. So telling employees not to access the internet is no longer realistic for most employers.

However, accessing the internet requires an internet connection (which the company pays for) and a company's internet bills along with the speed with which it may be able to complete business related online tasks can be dependent on the bandwidth they are using. So, for example, if your employees are spending too much time downloading or uploading pictures or watching movies or YouTube videos that can significantly reduce the available bandwidth available for legitimate, business related tasks the company needs to complete.

Proctor and Gamble ("P&G") recently took a step at maintaining a good supply of available bandwidth by completely banning its roughly 130,000 employees' use of the music streaming site Pandora and the movie/video site Netflix. According to its internal estimates, company employees were watching around 50,000 five minute YouTube videos and listening to 4,000 hour of music on Pandora every day! Interestingly, the company chose not to restrict YouTube use at this point because it uses the internet site to help sell many of its products. The company has indicated that other social media sites are not currently being blocked, but that other internet use restrictions may follow.

A total across-the-board elimination of access to social media websites while at work (based on the company's need to maintain adequate bandwidth for business purposes) is an interesting way to try to prevent employees from using social media. Of course, this solution only applies to employees while at work. There is nothing to prevent them from accessing social media sites at home (using their own bandwidth). To our knowledge, no court has weighed in on this practice. But before jumping on board with P&G's solution, you would be well advised to consult the laws in your jurisdiction and your employment counsel to ensure there would be no legal impediment to such a blanket work restriction. ■

"A total across-the-board elimination of access to social media websites while at work (based on the company's need to maintain adequate bandwidth for business purposes) is an interesting way to try to prevent employees from using social media."

Article courtesy of John G. Kruchko and Kevin B. McCoy, Kruchko & Fries.

How to Submit to the VAB Job Bank

Jobs that are printed in the newsletter are pulled directly from the online Job Bank. To include your listing:

- ▶ 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.

Digital Media Manager

Hampton Roads, VA

WAVY TV 10 is looking for a Digital Media Manager to join its outstanding team of web and news professionals. The Digital Media Manager works with the wavy.com team, the Hampton Roads area's leading news website, and WAVY TV 10's award-winning news department, producing engaging and empowering news elements for www.wavy.com. Along with producing interactive elements and custom web applications for the website, the Digital Media Manager is responsible for training, implementing new tech initiatives, and improving workflow and processes through the use of new technology. The ideal candidate will understand web architecture and user interface design & experience, as well as digital marketing and social media. Programming and scripting languages are also a key part of this position. Send resume and inquiries to Tim Moreau, Digital Media Director, tim.moreau@wavy.com. No phone calls please. EOE.

News Reporter

Richmond, VA

NBC12, Richmond's No. 1 TV news station seeks reporter with proven track record investigating and reporting stories. Live remote reporting experience is critical. Two years minimum professional experience preferred. Excellent computer and internet skills required. Send cover letter with salary requirements, resume and non-returnable demo tape to Nancy Kent Smith, News Director, NBC12, P. O. Box 12, Richmond, VA 23218. Drug Screen required. EOE.

New Producer

Norfolk, VA

Responsible for the time and controlling the flow of newscast during

air time, directing on air reporters and making decisions during the newscast. Must have the ability to solve problems to maintain the quality of the product. Supervises reporters in their assignments. Position would require some overtime and weekend cover. Send cover letter, resume and DVD or Beta SX tape of your work to Human Resources, WVEC-TV, 613 Woodis Avenue, Norfolk, Virginia, 23510. No phone calls. Send inquiries to jobs@wvec.com. EOE.

Anchor/Reporter/Producer

Harrisonburg, VA

WHSV-TV is looking for an outstanding anchor who can produce news for our award-winning morning show. Candidates need superior presentation skills, writing, producing and reporting experience. The ability to shoot/edit P2 and experience with web-publishing is a plus. Creative use of new media and viewer submitted content is critical in this position. Take a look at our morning show online at whsv.com and let us know how you would contribute. A good driving record is required. E-mail your resume to Kay Norred, News Director at knorred@whsv.com. EOE.

IT Assistant

Norfolk, VA

Sinclair Communications-Norfolk has a rare, full-time opening for an information technology professional to assist our IT Manager. Working knowledge of TCP/IP, network topology and infrastructure and Windows domain control. Experience supporting Microsoft and/or Apple desktops. Ability to work in a fast-paced and highly dynamic work environment. Strong verbal and communication skills. Experience with Linux server administration, Web development (HTML, CSS, Javascript)

and Audio and/or Broadcast-RF engineering a plus! Please submit resumes via jobs@sinclairstations.com on or before Tuesday, May 1st, 2012. EOE.

Digital Content Producer

Hampton Roads, VA

Applicants must be innovative, reader-focused and full of creativity with strong communication skills. Ensure accurate and engaging copy with a keen attention to detail; copy edit/rewrite news stories for online consumption; monitor and post relevant content on social media networks. Degree in journalism or related field and previous experience at a daily newspaper or news site required. Proficiency in Adobe Photoshop, Dreamweaver, and Basic HTML preferred; CSS, Flash and other relevant technology skills a big plus! If you possess these skills, send resume and inquiries to Tim Moreau, Digital Media Director, tim.moreau@wavy.com. No Phone calls. EOE.

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. High school diploma required, college degree preferred. Email resumes to HarrisonburgSalesTeam@ClearChannel.com or mail resumes to Clear Channel Media and Entertainment, 207 University Blvd. Harrisonburg, VA 22801. EOE.

Staff Accountant

Roanoke, VA

WFXR FOX 21/27 is looking for a

highly motivated individual that can work in a fast pace environment and can handle a wide range of tasks, which may include but are not limited to A/R, A/P, Payroll, GL and financial analysis. The ideal candidate would have a 4 year degree in accounting or related field, 1-3 yrs work experience with Excel and Peachtree a plus. We offer an exciting broadcast TV environment with an excellent benefits package. If you are interested in joining our professional team, visit us at www.fox2127.com or send resume with cover letter and salary requirements to Human Resources, WFXR-TV, 2618 Colonial Avenue, SW, Roanoke, VA 24015.

Local Sales Assistant

Roanoke, VA
WFXR-TV FOX 21/27 / WWCW-TV CW5 in the Roanoke/Lynchburg market is seeking a team player to assist our sales department in achieving their goals. Candidate must be detail-oriented, professional and able to work on multiple projects under tight deadlines. Candidate must also have advanced skills in Microsoft Word, PowerPoint and Excel. This position will also include data entry, customer service and clerical duties. Send cover letter and resume to Kim Smith, Local Sales Manager, Grant Broadcasting, 2618 Colonial Avenue, SW, Roanoke, VA 24015 or by email at ksmith@fox2127.com.

Promotion Producer

Portsmouth, VA
WAVY TV10 and WVBT is searching for a Promotion Producer who has the know-how to build ratings and beat the competition with crafty editing, slick graphic design and compelling sound. Must be well versed in all aspects of non-linear editing and have experience with HD cameras, sound equipment, and lighting. Qualified applicants must have proven experience with Adobe After Effects and Photoshop and working knowledge of Avid Media Composer. Must have strong interpersonal skills and the ability to successfully interact with all departments. Send a copy of your resume, cover letter and a

non-returnable DVD to: WAVY-TV, Attn: Kristen Joyal, 300 Wavy Street, Portsmouth, VA 23704. No phone calls please. EOE.

Director-Production Operator

Portsmouth, VA
WAVY-TV has an immediate full-time opening for a Director/Production Operator. This position is a multi purposed job including directing morning weekend newscasts, weekday studio control room operations, field shooting, and editing for various station needs. Experience: Strong candidates will have one year directing/TD. Must have strong operational skills for robotic cameras, be proficient in operating handheld camera, DEKO CG, and audio operation for newscasts. Candidate must be willing and able to work any/all shifts. Send Tape, resume and salary requirements to: Dave Whitener, Production Manager, WAVY-TV, 300 WAVY Street, Portsmouth, VA 23704. No phone calls please. EOE.

Producer

Roanoke, VA
Under the supervision of the News Director, the Producer is responsible for producing one of our prime newscasts. This includes gathering information about news events, deciding which news events to write about, writing scripts for news stories, and deciding on the order in which the stories will appear in the newscast. In addition, the Producer gives directions to the Anchors and Reporters during

the newscast. Further, the Producer attends meetings to discuss story ideas, and to make decisions about the format of the newscast. Apply online at www.mediageneral.com/careers.

Video Editor

Roanoke, VA
Under the supervision of the Chief Photojournalist, Chief Editor and News Director, the Video Editor is responsible for gathering and editing any video necessary for station newscasts, ID's and cut-ins. In addition, the Video Editor is responsible for logging tapes in the newscast logbook and maintaining the film library. Further, the Video Editor is responsible for maintaining the edit bays. Apply online at www.mediageneral.com/careers.

Production Tech I

Roanoke, VA
Under the supervision of the Production Supervisor, the Production Technician is responsible for various aspects of the production of the station's newscasts. This includes operating the chyron, running the teleprompter and floor direction. A Production Technician may specialize in any of these duties, but is expected to be able to perform all of these duties at any given time. In addition, the Production Technician is responsible for setting up and maintaining the studio and studio equipment. Apply online at www.mediageneral.com/careers.

New Courses from P1 Selling



It's official! Over the past few months we've been updating our campuses to better serve you. You'll now see four main quadrants including: Sales, Leadership/Management, On-Air, and HR/Administration. Dig in and enjoy.

New Training Content

- ▶ Station Tour
- ▶ How to Use P1 Selling
- ▶ Finance

Upcoming Content

- ▶ I.M.C. (7 courses)
- ▶ Live!!
- ▶ Sports Marketing
- ▶ Closest Thing to Hollywood

For more information, please visit our website at www.p1selling.com or call 816-456-8603.



LEGAL REVIEW

This article is the first of a two-part series discussing equal opportunities—tune in next month for the second part.

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.

©2012 Brooks, Pierce, McLendon, Humphrey & Leonard LLP

Equal Opportunities for Political Candidates for 2012 Political Season

With the 2012 political election cycle underway, many stations have questions about application of the “equal opportunities” law. At this time, stations may wish to refresh their staff on various aspects of how the “equal opportunities” rule works. Of course, this refresher is not intended to be legal advice that applies to any station’s particular circumstances or any specific set of facts—stations should not rely on this article for legal advice and instead should contact their legal counsel to determine whether and how the equal opportunities law applies in a particular situation.

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

- ▶ **All Public Offices and Elections.** The “equal opportunities” requirement applies in elections for all public offices, including federal, state, regional, county, and municipal offices. Similarly, the law covers all public elections including primary, general, run-off, and special elections.
- ▶ **Opposing Candidates.** A candidate acquires a right to equal time only when an appearance is made by an “opposing” candidate. Thus, an appearance by a Republican candidate for sheriff would not give rise to equal time by a Democratic candidate for Congress—because the candidates are running for different offices, they are not “opposing” candidates.
- ▶ **Equal Opportunities.** Once a station adopts a policy of selling or giving time it may not discriminate in any way among opposing candidates. A station, upon timely demand, must afford “equal opportunities” to all opposing candidates for the same office. This requirement applies to the availability of broadcast time and the desirability of the specific time period, the use of production facilities, the extension of credit, and the application of technical requirements.
- ▶ **Timely Requests.** A right to “equal opportunities” arises only when a timely request is made. Such requests must be made within 7 days of an appearance by an opposing candidate (or in advance of an appearance if directed to a specific future use known at the time of the request). Except for the limited exceptions discussed in the following paragraph, stations have no obligation to notify candidates when time is sold to other candidates, nor is a station

required to notify a candidate of time given without charge to opposing candidates. Stations must ensure that records of free time and notations of all requests for time are immediately placed in the station’s public political file. Failure to promptly place notification of a use in the political file may extend the 7-day period due to lack of proper notice.

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

“Equal opportunities” rights cannot be “daisy chained.” Assume, for example, that X, Y, and Z are all legally qualified candidates for governor. X broadcasts an announcement (a “use”) to which Y makes a timely “equal opportunities” request, but Z fails to do so. Z is barred from responding within seven days of Y’s responsive use. Z is required to respond to the first prior use triggering the right of response which, in this example, was X’s use.

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

Watch for further discussion on this subject next month! ■

Article by Stephen Hartzell, Attorney, Brooks, Pierce, McLendon, Humphrey & Leonard LLP.