

Broadcasters: Senate TV plan would cripple emergency alerts, journalism

Broadcasters are warning that a Senate plan to change the way people pay for TV channels could have dire consequences for viewers.

The 50 state broadcaster associations have prepared a letter to Senate Commerce Committee Chairman Jay Rockefeller (D-W. Va.) and Sen. John Thune (S.D.), the panel's top Republican, warning that their Local Choice plan will "destroy" the idea of giving consumers local content.

That would make it harder for people to find out information about emergencies, get weather reports and watch local news, and would hurt diversity, the state organizations wrote in a letter obtained by *The Hill*.

In their note, the organizations wrote that they "oppose this proposal because of its likely devastating impacts on broadcast localism and the nation's viewers."

The senators' plan, which they will likely try to attach to a bill reauthorizing an expiring satellite TV law, would allow people to pick and choose which broadcast TV channels like NBC or ABC they would like to receive as part of their cable or satellite subscription, and pay for them individually.



Cable and satellite companies have applauded the move to an "a la carte" system for broadcast TV stations and are launching a six-figure advertising campaign in support of the proposal, but broadcasters have pledged to fight back.

Bringing such a model to broadcast TV would increase prices, the groups added in their letter, "and result in fewer – not more – choices for consumers."

"Indeed, these are precisely the exact opposite results that your proposal appears to seek," they wrote. ■

Article courtesy of Julian Hattem from The Hill.

NAB Small Market Television Exchange

The VAB will be offering four \$500 scholarships for station representatives to attend the NAB Small Market Television Exchange. The Exchange will be held at the Marriott Rivercenter in San Antonio, Texas from September 18-20. Program and hotel details can be found at <http://www.nab.org/2014SMTE/>. These are co-op dollars that must be matched by the station nominating the station representative. These scholarships will be awarded on a first come, first serve basis and one per station. Once the \$2000 has been committed, we will not be able to pledge anymore for this years conference. If your station is interested in obtaining these scholarship dollars, contact Christina Sandridge at (434) 326-9815. ■

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Upcoming

September 25, 2014

Richmond Regional Meeting
5:30 p.m. - 7:00 p.m.
The Westin, Richmond

October 2-3, 2014

VAB Board Retreat
Keswick Hall, Charlottesville

October 9-10, 2014

Best of the Best
Leadership Session
Omni, Charlottesville

February 23-25, 2015

NAB State Leadership
Conference
JW Marriott, Washington DC

June 25-27, 2015

78th Annual Summer
Convention
Hilton, Virginia Beach

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Brad Ramsey Named VP of Sales for Gannett Broadcasting

Gannett Broadcasting has named Brad Ramsey Vice President of Sales. Ramsey is currently the President and General Manager of WVEC in Norfolk, VA and will assume his new role at Gannett headquarters on September 8.



said Ramsey. "I am incredibly excited to join the Gannett management team, and equally excited to work with our talented sales leaders and sales teams across the country."

Prior to joining WVEC, Ramsey was vice president and general manager of Gray Television's WCAV-WVAW-WAHU in Charlottesville, VA.

"It has been a great honor to lead WVEC and to be a small part of this station's great legacy, and I am really proud of all we have accomplished and the momentum we have,"

Ramsey has an MBA and Bachelor of Arts degree in communications, both from Virginia Tech. He is the 2013-14 president of the Virginia Association of Broadcasters and a past member of the Nielsen company's "A2/M2" client advisory board.

He and his wife Chris have two sons, Alex and Brady. ■

cocktails & CONVERSATIONS

VAB to Hold Richmond Regional Meeting

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, September 25th from 5:30 p.m. - 7:00 p.m. at the Westin Richmond, 6631 West Broad Street, Richmond, VA 23230.

Open to all station employees, with specific content for all department heads, managers and account executives. Please RSVP to Christina Sandridge at (434) 326-9815 or christina.sandridge@easterassociates.com.

We look forward to seeing everyone! ■

NAB to FCC: Cable, DBS Should Join Political File Party

The National Association of Broadcasters says it is fine with the FCC extending its online political file mandate to all video services, including cable and satellite and even broadcast radio, though there are some issues with the last that might require a phased-in approach.

The FCC earlier this month opened a docket (14-127) and sought comment on a petition by the Campaign Legal Center, Common Cause and Sunlight Foundation to require cable and satellite operators to make their political files part of a national searchable database, as is the requirement for all TV stations since July 1. "The Commission should...act expeditiously to proceed with a rulemaking to require all cable and DBS systems to post their public and political files online," said NAB.

The FCC phased in the requirement for TV stations, starting with the top four in the top 50 markets before extending it to all TV stations July 1. NAB fought the mandate for TV, but has always said that if the FCC were applying it, it was unfair not to apply it to its cable and satellite competitors. The political file includes contracts for political ad buys, including prices. They have always been public, but previously only had to be kept at the local station. The FCC requirement is that they be uploaded to a searchable FCC database, which campaign finance reformers — notably Sunlight Foundation et al. have used to keep track on ad buys, though they

have been pushing for even more disclosure in those files.

"The rate disclosure and public file requirements of Section 315 of the Communications Act, as amended by the Bipartisan Campaign Reform Act of 2002, apply not only to broadcast stations, but also to cable systems and direct broadcast satellite (DBS) operators as well," said NAB in its comments. "There is no reasoned basis for treating the public/political files of cable and DBS providers differently."

NAB even gives a shoutout to the growing competition from cable advertising. "[P]olitical spending on local cable increased 37.3% from 2010 to the 20126 — the same year that the top four affiliated television stations in the 50 largest markets were required to post their political files online. And local cable political spending is expected to further increase in 2014 to between \$680 and \$800 million, the same year that all television broadcast stations were required to begin posting their political files online.

"While these increases in local cable political advertising may or may not be directly attributable to the Commission's current disparate online political file requirements, they clearly show the importance of regulating similarly situated entities in a comparable manner." ■

Article courtesy of John Eggerton from Broadcasting & Cable.

"While these increases in local cable political advertising may or may not be directly attributable to the Commission's current disparate online political file requirements, they clearly show the importance of regulating similarly situated entities in a comparable manner."



New Feeding Virginia PSA Coming

Please be aware that the current PSA for the Virginia Association of Broadcasters community service campaign, "Feeding Virginia" expired Friday, August 15th. Please pull that spot from your inventory and we will send out the next PSA as soon as it is available. Thank you for all of your help in raising awareness for those less fortunate throughout the Commonwealth of Virginia. ■



LEGALREVIEW

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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~~Killing Two Birds With One Stone~~ ~~A Bird in the Hand Is Worth ...~~ **Save Money and Birds: Make Four Filings with the FAA and FCC to Turn Off Steady-Burning Red Tower Lights**

Two years ago, the FAA and FCC announced that the extinguishment of certain steady-burning red tower lights (L-810) on towers taller than 350 feet AGL (above ground level) would reduce tower-related avian mortalities. Of no less importance, the extinguishment of L-810 lights will also reduce electricity and maintenance costs for broadcasters and other tower owners. It was expected that a streamlined process would be adopted to facilitate tower owners' termination of the use of L-810s, but, to date, the process remains labor-intensive and requires the filing of two applications (one with the FAA and one with the FCC) and two subsequent notifications (again, one with the FAA and one with the FCC), for a total of four filings.

According to the FAA and FCC, birds are attracted to non-flashing red lights, such as L-810 side-marker lights, and birds are much less attracted to flashing lights on towers, such as L-864 and L-865 lights (per the FAA requirements, flashing red lights should flash at 30 FPM (+/- 3 FPM)). Moreover, the FAA has determined that extinguishing the L-810, non-flashing lights on towers taller than 350 feet AGL—while maintaining the flashing lights—is safe for aviation.

To implement the modified bird-friendly lighting scheme on a tower that is taller than 350 feet AGL, tower owners must obtain a "lighting deviation." To extinguish or eliminate the L-810 tower lights/side-markers on an existing registered tower, tower owners must take the following steps:

First, the tower owner should file a Marking and Lighting study electronically with the FAA. To do so, go to <https://oeaaa.faa.gov/oeaaa/external/portal.jsp> and request the elimination or omission of steady-burning lights (L-810) on FAA Form 7460-1, Notice of Proposed Construction or Alteration. In the request, you should designate the structure type as "Devia-

tion from Red Obstruction Light Standards."

Second, you must file your request with the FCC. However, you may file with the FCC only after the FAA has approved the request and assigned an FAA Study Number. To file with the FCC, you must file Form 854 using the FCC's Antenna Registration System (ASR), which is available at <http://wireless.fcc.gov/antenna/index.htm?job=home>. For an existing registered tower, you should select "MD – Modification" as the type of application and update the lighting to "Option 3 – Other" and provide a description (e.g., Style E w/ Red Light Deviation).

Third, after the FCC grants the tower modification request for the lighting, the tower owner can turn off the steady-burning, side-marker L-810 tower lights. Depending on the tower and the lighting system, this step may be accomplished in the tower transmission building rather than by climbing the tower.

Fourth, a notification must be filed with the FAA, using FAA Form 7460-2, to advise the FAA that the tower lighting change has been completed.

Fifth, (and finally), a notification must be filed electronically with the FCC, using the ASR system, to notify the FCC that "construction" of the tower lighting modification has been completed.

In addition to the on-tower lighting change discussed above, the FCC has observed that motion sensor-triggered security lighting also may reduce operating costs (as compared to steady-burning security lighting), promote tower safety and reduces the possibility of attracting migratory birds. ■

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

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THE VIRGINIA ASSOCIATION
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Leadership Program

Schedule

Session 1
DISC Assessment
October 9-10, 2014

Session 2
**Advocacy &
Government
Relations**
February 23-25, 2015
Washington, DC

Session 3
**Team Leadership
& Assignment of
Case Studies**
April 2015
Charlottesville, VA

Session 4
**78th Annual
Summer Convention**
*Case Study
Presentations*
June 25-27, 2015
Virginia Beach, VA

We are proud to announce the third year of the VAB's Best of the Best Leadership Program.

This eight-month program is designed to provide each participant with the maximum opportunity for professional and personal growth, while broadening their network base in an interactive environment. Candidates must have a minimum of two years experience in the broadcasting industry and be nominated by their station's general manager. Up to 15 applicants will be selected to participate in this unique program.

Why participate in the Best of the Best Leadership Program?

- ▶ Build leadership skills
- ▶ Develop a diverse business network
- ▶ Meet legislative officials and become an advocate for your industry
- ▶ Prepare for challenges facing the broadcasting industry

There is a required time commitment from both the participant and their employer. Please take a moment to review the calendar and ensure that it is compatible with your schedule. Attendance at each session—from start to finish—is mandatory!

If you are interested in expanding your leadership potential, please submit the following materials by **Monday, September 1, 2014:**

- ▶ Completed application
- ▶ Letter of recommendation from your sponsor/employer
- ▶ Electronic head-shot photograph
- ▶ Copy of your resume

The selection committee will meet in mid-September and notifications will be made by September 15th. If selected, the application fee of \$25 (small market), \$50 (medium market) or \$75 (large market) will be due on October 31, 2014.

If you have questions regarding the application or selection process, please contact Jonathan Williams at (804) 643-4433 x202 or email jonathan.williams@easterassociates.com.

HUMAN RESOURCES

The ADA and Reasonable Accommodation: No-Fault Attendance Policies

John G. Kruchko is a Partner with the Labor & Employment Law Firm of FordHarrison, LLP in Tysons Corner, Virginia; Kevin B. McCoy is also a Partner with the Firm. An original version of this article was prepared by Louis Britt, a Ford Harrison Partner in the Firm's Memphis office and Katie Parham, a Senior Associate in the Memphis office. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or by e-mail at jkruchko@fordharrison.com, or kmccoy@fordharrison.com. This article is published for general information purposes, and does not constitute legal advice.

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What if you have an employee on disability leave who is approaching the maximum amount of leave time under your attendance policy? When is modification of a no-fault or inflexible leave of absence policy required as an accommodation under the Americans with Disabilities Act (ADA)? Although the Equal Employment Opportunity Commission (EEOC) has taken the position that, absent undue hardship, an employer must modify such a policy to allow for additional leave to a disabled employee, the case law interpreting the ADA has provided no definitive guidance for determining when requests for additional leave may be unreasonable under the Act.

The EEOC's Position

The EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA specifically provides that so-called "no-fault" leave policies, under which employees are automatically terminated after they have been on leave for a specified period of time, are illegal under the ADA. In support of this position, the EEOC

has brought a series of lawsuits against employers challenging inflexible leave policies resulting in large monetary settlements for groups of employees denied leave under such policies. For example, in June 2014, a New Jersey health care employer agreed to pay \$1,350,000 to settle a case brought by the EEOC challenging the employer's policy limiting leaves of absence to twelve (12) weeks.

The Federal Courts' Weigh In

The EEOC's construction of the ADA has found support in the courts. There are a number of decisions that have required employers to grant additional leave to disabled employees as a reasonable accommodation. For example, in *Garcia-Ayala v. Lederle Parenterals, Inc.* (1st Cir. 2000), an employee requested an extension of her leave of absence after the one-year period of leave under the employer's policy had expired. In response, the employer terminated the employee and she sued under the ADA. The First Circuit Court of Appeals found for the

former employee, rejecting the employer's argument that the ADA can never impose an obligation on a company to grant an accommodation beyond the leave allowed under the company's own leave policy. The court of appeals also concluded that the employee's requested accommodation of an additional five months of leave time was not per se unreasonable. The court held that there must be an individual factual determination in each case that continuing the leave of absence would be an undue hardship for the employer.

Other federal courts of appeal have similarly concluded that reasonable accommodation under the ADA may include offering a disabled employee a limited amount of additional leave time over and above the limits established in an employer's uniformly applied "neutral" leave policy. *Graves v. Finch Pruyn & Co.* (2nd Cir. 2006); The key determinate in each case appears to be the employer's willingness to consider the disabled employee's requested accommodation, especially where the additional leave time requested is not indefinite and is fairly short in duration (i.e., a few weeks to a month in the above cases)

There are, of course, decisions that have more strictly construed an employer's obligation to provide extensions of leaves of absence to employees who cannot perform the duties of their positions, especially when the employer's policy already provides for substantial leave time to deal with disabilities or the employee cannot give a date certain for returning to work. Thus, it is clear that the ADA does not obligate an employer to grant indefinite leaves of absence to disabled employees as a reasonable accommodation. The thought being that employers are not required to indefinitely wait until a medical condition heals or is corrected. *Myers v. Hose* (4th Cir. 1995)

When is Requested Leave Per Se Unreasonable?

Another encouraging development for employers is the willingness of some courts to find a request for an extended leave of

absence to be an unreasonable accommodation based on duration alone. For example, the tenth circuit court of appeals affirmed a district court's holding that an employee's request for leave beyond six months was unreasonable both as a matter of law and because the employee failed to provide a definite estimate as to when she could return to full duty. Other courts in the eight and sixth federal circuits have reached similar conclusions, finding a six month and a year long leave of absence to be too long to be "reasonable" under the ADA.

Takeaway for Employers

Unfortunately for employers, the different, if not inconsistent positions taken by the EEOC and the federal courts means that here is simply no "bright-line" for determining when an employer can safely tell a disabled employee who has made repeated requests for extensions of a leave of absence that "enough is enough." Although a policy allowing a substantial period of time for leaves of absence can obviously be helpful in establishing the reasonableness of an employer's response to a disabled employee's need for accommodation under the ADA, it will not automatically insulate the employer from liability. Employers should avoid leave policies that impose inflexible limits on leaves of absence and certainly should not apply those policies in an inflexible manner. The better practice is to interact with the disabled employee and assess the situation on an individual basis to determine whether a request for an extension of the leave is a reasonable accommodation. If the disabled employee cannot provide an estimated date for returning to work within a short period of time, the request for an extension of the leave may be an undue hardship, especially where the employee's continued absence presents financial and operational difficulties for the employer.

Article courtesy of John G. Kruchko, and Kevin B. McCoy of FordHarrison LLP. An original version of this article was prepared by, Paul Lusky, an attorney in the Firm's Baltimore office.

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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.

Position	Locations	Type	Department	Organization
On Air Personality	Virginia Beach	Full Time	On Air	Max Media of Hampton Roads, LLC
Account Executive	Virginia Beach	Full Time	Sales	Max Media of Hampton Roads, LLC
Production Technician II	Roanoke, VA	Full Time	Production	Media General
Weekend Production Assistant - Part-time	Altavista, VA	Part Time	Production	D. J. Broadcasting Inc.
Midday Personality	Charlottesville, VA	Full Time	On Air	Charlottesville Radio Group
Engineering Intern	Roanoke, VA	Part Time	Engineering	WDBJ Television, Inc.
Evening Meteorologist	WCAV/CBS 19	Full Time	News	Gray Television
Bureau Chief	Roanoke, VA	Full Time	News	WDBJ Television, Inc.
Digital Content Producer	Norfolk/Portsmouth/ Virginia Beach	Full Time	(Other)	LIN Television-WAVY
Assignment Editor	Roanoke, VA	Full Time	News	Media General
Staff Accountant	Roanoke, VA	Full Time	Business / Admin	Grant Broadcasting System II
Photojournalist	Roanoke, VA	Full Time	(Other)	WDBJ Television, Inc.
General Assignment Reporter	Norfolk/Portsmouth/ Virginia Beach	Full Time	News	LIN Television-WAVY
Writer/Producer/Editor	WVEC-TV	Full Time	Promotion	WVEC Television, Inc.
Sports Intern	Roanoke, VA	Part Time	(Other)	WDBJ Television, Inc.
Morning News Producer	Hampton/Norfolk	Full Time	News	WVEC Television, Inc.
Anchor/Reporter	Hampton/Norfolk	Full Time	News	WVEC Television, Inc.
Producer	Roanoke, VA	Full Time	News	Media General
Reporter/Photojournalist	WHSV	Full Time	News	WHSV-TV
Account Executive	Harrisonburg/ Staunton	Full Time	Sales	Gamma Broadcasting LLC

To learn more about these jobs and to see new postings, please visit

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