

Next Year Looks Busy Already in DC

Title II, Telecommunications Act Revamp Will Top 2015 Docket

Cable operators will be busy over the next few months at the Federal Communications Commission, principally pushing back on Title II reclassification of Internet access, weighing in on the definition of over-the-top video providers, helping come up with new set-top standards and, in the case of the largest players, trying to push some major mergers over the goal line.

Telecom Act Reform: On Capitol Hill, House Republican leaders are promising to wade into a rewrite of telecom laws and to level the regulatory silos that they, and others, have suggested are so last-century.

That effort began in the House this year with a series of white papers. Washington observers predict Congress will start getting down to the details. Given that a comprehensive effort will likely take years, the Republican-controlled Congress may want to start off with a standalone FCC-reform bill.

Instead of trying for the “home run,” one cable lobbyist said, the GOP might want to



take on a single component that has been hanging out there and may be doable, such as process reform.

That is, unless the Republicans try to overreach — say, by trying to limit FCC merger conditions, as they did in a previous attempt at reform. “Nobody is going to throw

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Upcoming

February 23-25, 2015

NAB State Leadership Conference
JW Marriott, Washington DC

April 16-17, 2015

Best of the Best Session #3
Omni Charlottesville, Charlottesville, VA

June 25-27, 2015

78th Annual Summer Convention
Hilton, Virginia Beach





SAIL AWAY

for the

78th Annual Summer Convention

JUNE 25-27 2015

Hilton Virginia Beach Oceanfront
Virginia Beach, Virginia

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2015 continued

themselves on the track for FCC process reform," the lobbyist added.

Former Republican FCC commissioner Robert McDowell (now a partner at law firm Wiley Rein) said it is easier to "tear down some silos in pieces rather than all at once." Nonetheless, he said he thinks a comprehensive bill will eventually be hammered out.

"It remains to be seen exactly how the stars align, but I haven't seen this level of seriousness to get something done in a long time," McDowell said.

With Republicans taking over Senate committee and subcommittee chairmanships, most expect increased FCC oversight, including more hearings and perhaps Government Accountability Office reports on relevant issues.

Net Neutrality Hangs Fire: The FCC's new Internet- neutrality rules — either based in Section 706 authority, Title II or some combination — will likely not surface until at least February, but activists will continue to hammer the agency on the issue.

The agency won't put out some of the recent hybrid proposals for additional public comment, attempting to avoid any further delay in deciding on new rules.

Merger Action: One net-neutrality safety valve for the FCC is the proposed merger of No. 1 cable operator Comcast with No. 2 Time Warner Cable. If the FCC allows the deal, the chairman could make adherence to the new rules a condition — as then-FCC chairman Julius Genachowski did in Comcast's 2011 merger with NBCUniversal — whether or not they are thrown out in court.

A Comcast spokesperson declined to comment on whether or not a condition involving Title II would put the kibosh on the deal.

That merger, and telco AT&T's acquisition of satellite-TV provider DirecTV, have already wound up in federal court. Programmers obtained a stay of the FCC's decision to make

copies of program contracts and their work product available to hundreds of third parties. The underlying suit against the decision could delay the completion of both mergers, particularly given that oral argument isn't set until February.

Spectrum for Sale: Net neutrality is the poster issue for the FCC, but the agency will also be plenty busy tying up loose ends on its most-productive-ever spectrum auction: AWS-3, which generated over \$41 billion.

There's also the upcoming broadcast incentive auction, which affects cable operators to the extent that the FCC opens up more unlicensed spectrum for WiFi, as well as the headend retuning that will be required with the station repack. Cable operators will be compensated out of the auction proceeds.

Also on the FCC docket is the classification of linear over-the-top providers as multichannel video programming distributors for regulatory purposes. That could be a game-changer for video competition, but the FCC's proposal is filled with more questions than answers and is more the beginning of process. So don't look for a vote on a final order on the rulemaking proposal anytime soon. But there will likely be plenty of debate and comment at the FCC.

Set-Top Regulations: Now that the STELAR Act compulsory-license renewal legislation is law, the FCC plans to start working on a successor regime for software-based set-top box security and surfing, as well as a congressionally mandated review of what constitutes good-faith negotiations between programmers and distributors.

The FCC will need to create a set-top working group where issues will include two-way compatibility, competitive access, licensing terms, security, privacy and data collection — or tracking what people are watching. ■

*Article courtesy of John Eggerton from
www.multichannel.com.*

Host a VAB Intern at Your Station Next Summer

Through the NCSA programs and membership services, the VAB will again offer PAID summer internships during Summer 2015 to students entering their Junior or Senior year in the Fall of 2015! The internship program is 8 weeks in length and will begin on Monday, June 1, 2015. All interns should plan to work 40-hours per week at \$7.25/hour. A total of 32 students statewide will be selected to participate. We need stations in all markets to volunteer to host an intern!

If you are interested in hosting a VAB intern, please email christina.sandridge@easterassociates.com by February 13, 2015. We will also need to know who the internship coordinator is going to be at your station, his or her phone number and his or her email address. If your station is selected to participate, the intern assigned to you MUST be interviewed by you prior to final commitment. And, please be advised that every attempt will be made to place an intern at your station, but unfortunately, we cannot guarantee that we will receive an application from a student who will be living in your area next summer!

Please remember that in order for a student to be a VAB intern, he or she must complete the application on line - <http://vabonline.com/>



[careers/internships/](#) - and it must be post-marked by the deadline date of February 13, 2015. We are happy to try to match students to stations, especially if you request a particular student, but that student still needs to complete an application with the VAB.

Only students who are Virginia residents OR a non-resident currently attending an accredited college or university in the state of Virginia are eligible for the Summer Internship Program. ■

If you have any questions or concerns, contact Christina Sandridge at (434) 326-9815 or christina.sandridge@easterassociates.com.

VAB Members: New & Recommended Courses from P1



► DISC Series

Whoever said, "The customer is always right," was wrong! This is because a customer who stalls is wrong. They should be buying, not stalling. Watch this course to learn more about defending customer stalls.

► Business Meals

Whether it's with a client or your employees - are different than your average meal. From hosting a business meal to attending one, this updated 3-part series will help you maintain the right appearance every time.

► Business Attire Basics **COMING SOON!**

While some companies are more loose on how their employees dress around the office, there's no denying that when the time comes to represent the company to a major client, business function, or just during an interview, dressing for success is key.

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



In this issue, the VAB takes a closer look at Lorenzo Hall from this year's Best of the Best Leadership Program class.

Meet the VAB's Best of the Best



Lorenzo Hall

Where did you grow up/go to school?

I grew up in Washington, D.C. , however, I went to school in Columbia, MO at the University of Missouri-Columbia.

What was your first job in broadcasting?

My first job in television was at KOMU-TV 8, the NBC affiliate in Columbia, MO. My first full-time broadcasting job was WTVR-TV.

What is your career goal?

My career goal is to be an investigative reporter and/ or anchor.

What are you most looking forward to learning/taking away from the Best of the Best Leadership program?

I'm most looking forward to expanding my knowledge of the business. I've frequently

been engaged in the journalistic side of broadcasting, but I've always been intrigued by the business side of this industry.

What do you like to do in your free time?

I love relaxing with a good book in the winter and being a beach bum during the summer.

If you could have dinner with somebody from the past, present or future who would it be and why?

I've always been enamored with Martin Luther King. He had the ability to effectively lead millions of people, while also changing the country's course. King did so while facing death threats, jail time and repeated opposition.

Station Award Application Now Available Online

The Virginia Association of Broadcasters Station Awards Program is sponsored annually by the VAB to recognize outstanding achievement by Virginia radio and television broadcasters. This competition was established to encourage the highest standards of reporting, community service and production creativity. It brings the ultimate prize-peer recognition to members of the broadcast industry in Virginia.

Awards for Outstanding Achievement in Broadcasting will be presented during the Annual VAB Summer Convention at the VA Beach Hilton in Virginia Beach, June 25-27, 2015. The awards presentation will be held at the banquet on Friday evening, June 26, 2015. Only VAB member radio and television stations are eligible to participate. Awards judging will be conducted by the Pennsylvania Association of Broadcasters.

If you are planning on submitting an entry for the Outstanding Newscast category, please note it should have aired on your station during a regularly scheduled time period on Thursday, November 20, 2014, Monday, November 24, 2014, Tuesday, December 9, 2014, OR Thursday, December 11, 2014.

The full station awards brochure can be found at www.vabonline.com. Entries will be due by Friday, April 10, 2015.

Should you have any questions or concerns, please call Christina Sandridge in the association office at (434) 977-3716 or email, christina.sandridge@easterassociates.com. ■



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
Weekend Anchor (News)	Roanoke, VA	Full Time	News	Media General
Meteorologist/Weather Anchor (News)	Roanoke, VA	Full Time	News	Media General
Producer	Roanoke, VA	Full Time	Production	Media General
Photojournalist	Roanoke, VA	Full Time	Production	Media General
News Specialist	Richmond, VA	Part Time	News	WWBT, Inc.
Creative Services Director	WFXR/WWCW Roanoke, VA	Full Time	(Other)	Grant Broadcasting System II
Digital Sales Manager	WFXR/WWCW Roanoke, VA	Full Time	Sales	Grant Broadcasting System II
Morning Executive Producer	Norfolk/Portsmouth/ Virginia Beach	Full Time	News	LIN Television-WAVY
Account Executive	Norfolk/Portsmouth/ Virginia Beach	Full Time	Sales	LIN Television-WAVY
Evening Executive Producer	Norfolk/ Portsmouth/ Virginia Beach	Full Time	News	LIN Television-WAVY
Morning Anchor/Producer	WHSV	Full Time	News	WHSV-TV
Editor/Photojournalist	WHSV	Full Time	News	WHSV-TV
Senior Digital Sales Specialist	Richmond, VA	Full Time	Sales	WWBT, Inc.
Production Intern	Roanoke, VA	Part Time	Production	WDBJ Television, Inc.
Station Operations Manager	Roanoke, VA	Full Time	Business / Admin	WPXR-TV
Producer	Roanoke, VA	Full Time	News	Media General
Account Executive	WHSV	Full Time	Sales	WHSV-TV

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

www.vabonline.com/careers

HUMAN RESOURCES

New Test for Compensable Time Under the FLSA

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Employers have long been plagued by the constantly changing landscape in the wage and hour arena. In addition to properly categorizing employees as either exempt or non-exempt, employers must also determine which activities that an employee engages in either before or after “work” are compensable under the law. With often mandatory attorneys’ fees and escalating liquidated damages, failing to properly record and compensate employees for “all time worked” can result in immense liability for an employer. On December 9, 2014, the United States Supreme Court issued a unanimous decision, *Integrity Staffing Solutions, Inc. v. Busk*, that helps refine the often gray area of compensable vs. non-compensable time.

In 1938, Congress passed the Fair Labor Standards Act (“FLSA”), which established the forty-hour work week, a national minimum wage, guaranteed “time-and-a-half” for overtime in certain jobs, and prohibited most child labor. In 1947, Congress passed the Portal-to-Portal Act in response to the Supreme Court case *Anderson v. Mt. Clemens*

Pottery Co., which interpreted the FLSA so broadly that nearly all time that an employee spent on the employer’s premises was compensable. For the last several years, federal courts have consistently interpreted and enforced the Portal-to-Portal Act, which exempts employers from FLSA liability for claims based on activities which are preliminary to or postliminary to the performance of an employee’s “principal activities.”

The Supreme Court had previously interpreted “principal activities” to include activities that are an “integral and indispensable part of the principal activities.” For many years courts looked at a variety of factors in an attempt to determine which activities were indeed “integral and indispensable.” For example, courts often analyzed whether the activity was required by the employer, whether the activity was necessary for the employee to perform his or her assigned duties, and whether the activity in fact benefited the employer. As a result, for many years employers were advised that if the activity primarily benefited the employer or if the

employer required the employee to engage in the activity, the activity was a “principal” employment activity and thus compensable under the FLSA. Such interpretation gave rise to a series of class action lawsuits that sought payment for time spent in security screenings and mandatory employer-held meetings that occurred after employees “clocked out” for the day.

In *Integrity Staffing Solutions*, plaintiffs were required to pass through a security screening station at the end of their shift. While the process was relatively minor and non-intrusive in theory – it merely required employees to empty their pockets and walk through a metal detector – the plaintiffs alleged that in practice the stations were severely understaffed and thus resulted in wait times of up to twenty-five (25) minutes for each employee. The plaintiffs alleged that this “wait time” benefited the employer, as it was designed to prevent theft and lost profits, and thus was compensable time.

In its decision, the Supreme Court provided employers with a simple and straightforward test for differentiating between compensable and non-compensable time. The Court clarified that an activity is “integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities.” In applying this test, the Supreme Court clarified that the critical question is not whether the activity benefits the employer, but rather whether the employee can perform the essential and required elements of his or her job without engaging in the preliminary or postliminary activity. Thus, under this test, if the employee can in fact perform the essential elements of the job without engaging in such activity, the time spent engaging in the preliminary or postliminary activity is non-compensable.

The Court unanimously held that the security screening was a non-compensable postliminary activity, specifically noting that

the “wait time” was not indispensable to the plaintiffs’ job as the plaintiffs’ were not employed to undergo security screenings, but rather were employed to fill warehouse orders and prepare items for shipment. Most importantly for employers, the Supreme Court clarified that mere fact that an employer requires the employee to engage in an activity is not enough, on its own, for the activity to be compensable. Thus, even though the employer required employees to participate in the screening and the employer directly benefited from the screening, the activity was not “indispensable” to the employees principal activities and thus was non-compensable.

The Court also provided helpful examples of various activities that would serve as a compensable. For example, the Court noted that time battery-plant employees spent showering and changing clothes due to their exposure to toxic chemicals, and where the employer conceded that such activities were indispensable to the job, would be compensable. The Court reasoned that the time spent changing into protective clothing was “indispensable” because the employee could not perform the essential elements of his or her job without the protective clothing due to the exposure to toxic chemicals. However, the Court concluded that time spent waiting to put on clothes and/or shower would be non-compensable because it was “two steps” removed from the principal activity.

What does this mean for employers in Virginia? Under the newly articulated standard, the mere fact that an activity “benefits” the employer is no longer enough to move that activity into the compensable time category. The more specific requirement that the activity be related and “indispensable” to the employee’s job duties and performance should prevent employees from claiming a wide variety of preliminary and postliminary activities as compensable time. Employers should review their time keeping policies to ensure compliance. ■

Under the newly articulated standard, the mere fact that an activity “benefits” the employer is no longer enough to move that activity into the compensable time category.

Article courtesy of John G. Kruchko and B. Patrice Clair of FordHarrison LLP.



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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Five-Month EEO Countdown for Virginia Radio Stations: June 1, 2015 Deadline Approaching

Among other things, the FCC's EEO rules require stations to engage in specific non-vacancy outreach efforts every two years. For Virginia radio stations, the current two-year period ends June 1, 2015. (For Virginia television stations, the most recent two-year period ended June 1, 2014.) June 1, 2015, is particularly important for Virginia radio stations because it also represents the halfway point of the current eight-year Virginia license term (stations operating under a short-term renewal license term may be on a different schedule and should consult with their FCC counsel), which means that FCC Form 397 (the "Broadcast Mid-Term Report") will need to be filed with the FCC, including the station employment unit's annual EEO Public File Reports covering the most recent two-year period.

To satisfy their non-vacancy outreach efforts, broadcasters may select initiatives from the FCC's outreach "menu" that they believe will be most effective for their stations. Every two years, stations that have more than 10 full-time employees and are not located in a "smaller market" must engage in at least four of the initiatives on the menu, and stations that are located in a "smaller market" or have five to ten full-time employees must engage in at least two of the initiatives. (A "smaller market" is a community that is located in a county that is outside of all metropolitan areas, as defined by the federal Office of Management and Budget or is located in a metropolitan area that has a population of fewer than 250,000 people.) Stations with fewer than five full-time employees are not required to engage in any menu option outreach activities. For purposes of the FCC's EEO rules, a "full-time" employee is one who regularly works 30 or more hours per week.

A complete list of the 16 categories of outreach activities is listed in the EEO rule itself, which is available online. Click one of the preceding links and scroll to the second page of the PDF file. For example, to fulfill the menu option outreach requirement, a broadcaster that needs four "credits" could, during a

two-year period, host one job fair, conduct an internship program, participate in a scholarship program, and co-sponsor one job fair with an organization in the business and professional community whose membership includes substantial participation by minorities and women.

The rules permit broadcasters to perform the menu options on a joint basis, but a station seeking credit for a particular menu option performed on a joint basis must have meaningful involvement in the activity, by which the FCC means that the station has meaningful input into the planning and implementation of a particular event. It is not sufficient for the station to merely lend its name to an activity or to provide money where the activity is otherwise entirely conducted by another entity. For example, the hosting of a job fair may be performed on a joint basis; however, insofar as a particular station's participation amounts to little more than attendance at the job fair, that broadcaster can only claim credit for attendance, even if it has been nominally designated a co-sponsor. Similarly, for a scholarship program involving multiple stations, each station claiming "credit" must be involved in activities such as designing the program, soliciting scholarship applicants, maintaining scholarship materials at the station, interviewing or selecting scholarship recipients, promoting the program on air, and evaluating the effectiveness of the program.

Finally, each year the FCC randomly audits stations to evaluate their compliance with the EEO rules, and the FCC has been enforcing its EEO rules by imposing fines and reporting requirements. Stations should take the opportunity early in 2015 to "map out" and plan their outreach activities for the calendar year, with Virginia radio stations especially keeping the June 1, 2015, deadline in mind. As June 1, 2015, approaches, the VAB will remind Virginia radio stations of the Broadcast Mid-Term Report filing deadline. ■

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