

## Pay TV's Mission is to Kill Free Broadcast Television

During the last Satellite Television Extension and Localism Act (STELA) reauthorization, the process was derailed by debates about other cable industry (Pay TV) issues. Congress missed the reauthorization deadline, which threatened to disrupt satellite television services for rural consumers.

Many have urged <http://www.broadcasting-cable.com/news/news-articles/editorial-clean-stela/114560> Congress to avoid a similar fate this time through a "clean" STELA bill. Excluding side issues would enable timely action on STELA and ensure other proposed changes receive more comprehensive consideration.

Pay TV is nevertheless pushing Congress to transform STELA into a debate about "retransmission consent" — the right of TV stations (Free TV) to control redistribution of their programming. Pay TV claims they are raising consumer prices because Free TV is charging too much for retransmission rights. Spinning it as a consumer issue has prompted Congress to ask whether it should adopt reforms to retransmission consent [http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=66c15f4b-79af-4f30-8a5e-29db59c814e3](http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=66c15f4b-79af-4f30-8a5e-29db59c814e3) in the STELA process.

The answer is "No." Changes sought by Pay TV could have significant consequences for

video consumers and market participants that cannot be adequately explored in the truncated STELA process.

When the signal is separated from the noise, Pay TV claims about programming prices don't resonate. Retransmission prices are lower than the rates Pay TV distributors willingly pay their affiliates for similar cable programming, and traditional market analysis shows that Pay TV has more pricing power than Free TV.

The absence of credible evidence that retransmission prices are too high begs the question Congress should be asking: Why has Pay TV made this their highest legislative priority? Evidence suggests their ultimate goal is to kill Free TV and take its advertising revenue.

Both Pay and Free TV distributors derive revenue from the sale of local advertising. Available advertising time is typically split between TV distributors and programming networks in both market segments.

The difference is the degree to which different TV distributors rely on advertising revenue. Most Pay TV revenue is from subscription fees whereas Free TV distributors get most of their revenue from advertising.

*continued on page 2*

## Inside

- 3** Radio Continues to Grow!
- 3** Members Mingle at State Leadership Conference
- 4** HR: March Madness: Could Friendly Wagers Among Employees Put Your Organization at Risk?
- 5** FCC Head Cheers "Transformative" Spectrum Plans
- 6** Job Bank
- 8** LEGAL REVIEW: Drone Opportunities for Virginia Broadcasters

## Upcoming

### May 7-8, 2014

Best of the Best Session (Leadership & Case Study Assignments), Omni, Charlottesville

### June 19-21, 2014

77th Annual Summer Conference, Hilton, VA Beach

V A B ♠ 7 7<sup>th</sup> Annual Summer Convention

# June 19 - 21, 2014

Hilton Virginia Beach Oceanfront | Virginia Beach, Virginia

REACHING MORE PEOPLE. TOUCHING MORE LIVES.

250 West Main Street, Suite 100  
Charlottesville, VA 22902  
434.977.3716 • 434.979.2439  
[www.vabonline.com](http://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 fax  
[www.vabonline.com](http://www.vabonline.com)

## PRESIDENT

Brad Ramsey  
WVEC-TV, Norfolk

## PAST PRESIDENT

Bob Willoughby  
WHTI-FM / WKHK-FM /  
WKLR-FM / WURV-FM, Richmond

## PRESIDENT-ELECT

Jack Dempsey  
WCYB-TV, Bristol

## SECRETARY/TREASURER

Charlie Russell  
WESR-AM/FM, Onley

## EXECUTIVE DIRECTOR

Douglas Easter

## ASSOCIATE ADVISORY

Michael Guld  
The Guld Resource Group, Richmond

## BOARD MEMBERS

### Districts 1, 2 & 4

Doug Davis  
WAVY-TV / WVBT-TV, Portsmouth

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

Dave Paulus  
WGH-AM/FM / WVBW-FM /  
WXMM-FM / WXEZ-FM,  
Virginia Beach

### District 3 & 7

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

Stephen Hayes  
WTVR-TV, Richmond

Don Richards  
WWBT-TV, Richmond

### Districts 5

Steve Gaines  
WCYK-FM / WHTE-FM / WCHV-AM  
/ WZGN-FM / WKAV-AM,  
Charlottesville

George Kayes  
WSET-TV, Lynchburg

### Districts 6 & 9

Roger Bouldin  
WXBQ-FM / WAEZ-FM, Bristol

Susanne Myers  
WTGD-FM / WHBG-AM / WJDV-FM  
/ WQPO-FM / WSVA-AM,  
Harrisonburg

Leesa Wilcher  
WSLS-TV, Roanoke

### Districts 10 & 11

Chuck Peterson  
WFQX-FM / WKSI-FM / WMRE-AM  
/ WUSQ-FM, Winchester

Bob Scutari  
WJLA-TV, Arlington

## CONSULTANTS

Labor & Law Employment Council  
John G. Kruchko, Paul M. Lusky  
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

## Mission *continued*

The revenue sources of cable (Pay TV) and broadcast (Free TV) programming networks reflect their corresponding distributors. Cable networks derive more revenue from license fees paid by distributors for programming distribution rights than from advertising sales whereas broadcast networks derive nearly all of their revenue from TV advertisements.

These revenue models are starting to change.

As TV viewership has gradually shifted to Internet media platforms, Free TV is facing increased competition for advertising revenue. Free TV has responded by diversifying its revenue stream through the sale of retransmission rights and online advertising.

In the Pay TV segment, cable operators are facing increased competition for subscribers. From 2002 to 2012, cable's video subscriber share decreased by 20%. Cable has responded to subscriber losses by focusing more effort on local advertising, which is now growing annually at double digit rates.

This growth opportunity for Pay TV distributors is constrained by their inability to sell advertising for broadcast network programming. When they buy programming from cable networks, they split the available advertising time. But when Pay TV distributors buy broadcast programming through retransmission consent, there is no advertising available to split — it's already been split between TV stations and broadcast networks.

This advertising revenue is significant. Free TV advertising time generated at least \$35.8 billion in 2011. TV stations sold \$10.3 billion in local advertising alone, which is more than double the \$4.2 billion in local advertising revenue earned by cable operators that year.

This fundamental inability to share in Free TV advertising revenue is driving Pay TV dissatisfaction with retransmission consent rights. Pay TV distributors see TV stations as a middleman in the programming supply chain who blocks them from making money on advertising during broadcast network programming. If they could obtain programming from broadcast networks directly, Pay TV distributors would realize the

revenue generated by the advertising split, not TV stations. Satisfying the Pay TV desire to buy programming from broadcast networks and share the advertising split directly, however, would mean the end of Free TV, which relies on advertising and retransmission consent revenue to survive.

A recent paper <<http://freestatefoundation.org/imag>> by the Free State Foundation that advocates repeal of the retransmission consent provision implicitly admits that this is the ultimate goal:

Absent regulatory intervention there would be no TV broadcast industry today, and cable operators and other [Pay TV distributors] would pay nothing to broadcasters. The [Pay TV distributors] would acquire program rights directly from the program content owners. Without broadcasters to tax [Pay TV distributors] and viewers there would be more programming and lower program prices.

In short, Pay TV's fixation on retransmission rights isn't about programming prices — it's about eliminating the Free TV model and increasing advertising revenues for Pay TV distributors. This explains the cognitive dissonance of some free market advocates who, while clamoring for repeal of retransmission consent and other provisions that are essential to the Free TV model, are not advocating for repeal of provisions mandating that TV stations broadcast their signals for free. It's a nifty way of killing Free TV without expressly acknowledging it.

Irrespective of the Free TV model's merits, a policy change of this magnitude should be debated transparently and comprehensively, not rushed through STELA wearing a false "market failure" masque. If Congress intends to eliminate Free TV, it should at least recognize the legitimate consumer and investment-backed expectations created by the current statutory framework and consider appropriate transition mechanisms. The Communications Act update would provide an appropriate legislative vehicle for that consideration. STELA reauthorization does not. ■

---

*Article courtesy of Fred Campbell, executive director of the Center for Boundless Innovation in Technology and former chief of the FCC's wireless bureau.*

# Radio Continues to Grow!

RADAR	March 2010	March 2011	March 2012	March 2013	March 2014
Release	RADAR 104	RADAR 108	RADAR 112	RADAR 116	RADAR 120
Weekly Cume	239,769	241,923	241,512	243,177	244,457

**Radio now reaches 244.4 million Americans on an average weekly basis.**

Neilsen has released its March 2014 RADAR 120 National Radio Listening Report, which found that the total U.S. radio audience increased by more than 1.2 million weekly listeners since March 2013. Radio now reaches 244.4 million Americans on an average weekly basis—92% of the total U.S. population ages 12 and older.

Daily TSL among radio listeners ages 12 and up averages approximately 2 hours and 41 minutes a day, which held steady from the previous year. What’s more, the national 18-34 audience grew by more than half a million compared to the previous year, reaching 91.9% of that demo.

Radio increased its national reach again this survey, adding more than a million listen-

ers on a weekly basis in the March 2014 RADAR report.

Radio’s national reach also increased among African-American and Hispanic audiences, compared to the previous year, as more than 31 million 12+ African-Americans listened in an average week, or 91.7% of the total U.S. African-American population.

Hispanic audiences grew by 574,000, meaning radio now reaches 93.6% of all 12+ Hispanics in an average week. These increases among Hispanics were spread evenly among those 18-34 (added 286,000 more listeners), 18-49 (298,000 more listeners), and 25-52 (243,000 more listeners). ■

*Article courtesy of [www.allaccess.com](http://www.allaccess.com).*



## Members Mingle at State Leadership Conference

VA Rep. Bob Goodlatte, Chairman of the House Judiciary Committee, was a featured speaker at the NAB State Leadership Conference in Washington, DC. After his talk, he took time to speak with VAB members.



## March Madness: Could Friendly Wagers Among Employees Put Your Organization at Risk?

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. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or by e-mail at [jkruchko@fordharrison.com](mailto:jkruchko@fordharrison.com), or [kmccoy@fordharrison.com](mailto:kmccoy@fordharrison.com). This article is published for general information purposes, and does not constitute legal advice.

©2014 FordHarrison, PLC



March Madness, Super Bowl, and Fantasy Football pools have become ingrained in the American workplace and seem harmless to many; however, permitting such activities creates a wide range of risks for employers, from productivity loss to discrimination and disability issues and even criminal penalties.

Before turning a blind eye or participating in the pool, here are a few risks with which employers should become familiar.

**Illegal Moves**—Gambling at work is illegal in many states, including Virginia, Maryland, and the District of Columbia, and resides in a legal gray area in other states. Further, with more employers operating in multiple states and more employees working remotely, office betting pools may span state lines and may violate federal law.

**Blowing the Whistle**—Because gambling is illegal, employers should also watch out for employees who “blow the whistle” on activities such as an employer’s betting pool and then claim retaliation.

**Impact on Productivity**—Although there

is no legal liability, employees watching ball games during work hours can reduce productivity and potentially impact your bottom line. Further, just a few employees streaming games on work computers can significantly slow your network, impacting other employees.

**Employee Morale**—While some managers believe office pools are good for employee morale, be aware that some employees may object to them. An employee who objects to gambling on religious grounds may bring a hostile work environment claim if co-workers – or worse, supervisors – harass or ridicule the employee for not participating in the pool.

**Disability**—While the Americans with Disabilities Act (ADA) specifically exempts gambling addiction from its coverage, an employee with gambling problems may suffer from other medical conditions, such as depression or mental illness, which may be covered by the ADA or state law.

Compulsive gamblers may have other problems at work, such as borrowing money from co-workers, being distracted from work, and attendance problems.

### The Best Defense is a Good Offense

If employers decide to take a chance on employee betting, they should institute clear policies. The policy should: (a) state that gambling is illegal; (b) describe acceptable and prohibited behaviors; (c) state that employees can be disciplined for violating the policy; and (d) identify all work areas where betting is prohibited, including offices, cafeterias, and parking lots.

Employers should also include a mechanism for employee complaints and be prepared to handle them in the same way as any other complaints. Enforcement of the policy is key. Employers face a greater chance of liability when they have a policy but do not enforce it fairly.

### Employers' Bottom Line:

Employers should be wary of turning a blind eye to workplace gambling, including bracket pools. Depending on the applicable state laws, employers who choose to allow gambling at work should institute policies defining acceptable and unacceptable behavior and should discipline violators.

Additionally, FordHarrison has prepared a survey of state social gambling laws, which is available on the Knowledge Center page of our web site. ■

---

*Article courtesy of Salvador P. Simao, Joanna S. Rich, John G. Kruchko and Kevin B. McCoy of FordHarrison LLP.*

**Employers are advised to stay abreast of these new changes at the NLRB as they continue to develop and to consult experienced labor counsel if issues or questions arise with their own employees.**

## FCC Head Cheers “Transformative” Spectrum Plans

Federal Communications Commission (FCC) Chairman Tom Wheeler has said that his agency is in the midst of projects that could “completely revolutionize” the way people communicate with each other.

The commission’s upcoming auction of room on the nation’s airwaves, along with plans to share spectrum space, are “fundamentally transformative” policies that could lead to thousands of new jobs and new innovation, he said at the Brookings Institution.

“We at the FCC will make unprecedented use of market mechanisms and the flexibility of digital technology to derive greater value from our finite spectrum resource,” he said.

Wireless companies have been hungry for more room on the airwaves to keep up with the growing demand for users streaming videos and playing games on their phones and tablets.

Next year, the commission is scheduled to hold an “incentive auction” to reassign spectrum licenses. Broadcasters that currently hold the licenses will be able to auction the rights to the FCC, which will in turn sell them off to wireless companies.

The FCC chairman made an attempt to encourage broadcasters that may be skeptical of the auction to take part.

“Seldom have I seen such a risk-free opportunity as that represented to broadcasters by the incentive auction,” Wheeler said. “It’s a win-win-win situation. You don’t normally get those kinds of opportunities in new and innovative circumstances.”

“If we proceed responsibly, as I am confident we are, the rewards of vastly improved spectrum policy will make our collective endeavor entirely worthwhile for everyone involved,” he added.

As if to underpin the growing reliance on devices relying on the spectrum, Wheeler’s cell phone started ringing midway through his remarks.

“Just consider this one more example of why we need good spectrum,” he said to laughs from the audience, while waving his phone. ■

---

*Article courtesy of Julian Hattern from [www.thehill.com](http://www.thehill.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](http://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.

### **Director**

#### **Richmond, VA**

NBC12 seeks experienced director. Responsibilities include directing/technical directing, pre-production, audio operation, floor directing, robotic camera operation. Experience with Kahuna HD Video switcher, Chyron/Thunder and audio consoles a plus. Social media competency required. Qualified applicants only apply on line at <https://careers-raycommedia.icims.com>. Drug Screen required. EOE M/F/D/V.

### **Traffic Reporter / Fill-In Anchor Norfolk / Portsmouth / VA Beach, VA**

WAVY-TV 10 / WVBT FOX 43 is searching for a morning newscast traffic reporter at the number one station in the Norfolk, Va. market. The successful candidate will have the ability to work with multiple sources of traffic data and deliver it clearly to our audience both on air and online and have strong ad-libbing skills. Must be willing to work a split shift to handle early evening newscasts when necessary. This traffic reporter will be asked to report general assignment stories, as well as fill-in as anchor when necessary. Experience reporting and anchoring preferred. Experience handling traffic reporter duties in newscasts at a commercial television or radio station is required. Please send cover letter, resume, and DVD examples of your most recent work to: Jim Gilchrist News Director WAVY-TV 10 / WVBT-TV FOX 43 300 Wavy St. Portsmouth, VA 23704 or [newsjobs@wavy.com](mailto:newsjobs@wavy.com). No phone calls, please. EOE.

**On-Air Television Host / Digital Lifestyle Content Correspondent  
Norfolk / Portsmouth / VA Beach, VA**  
WAVY-TV 10 (NBC) in Hampton Roads, Virginia is looking for an on-air co-host

for its one-hour daily lifestyle show "The Hampton Roads Show." Airing at 11:00 a.m. each weekday, The successful candidate is a skilled communicator who is adept at engaging viewers and guests in a non-scripted environment. Knowledge of current events, popular culture, and compelling subjects making news in Hampton Roads is key. The ideal candidate brings strong interview skills and an energetic social media presence and may contribute to other WAVY-TV and FOX43 programs. At least three years on-air experience is required and the ability to shoot, edit, and write your own stories is a plus. Proven execution and understanding of how to write for the web, social media, and provide extras on all platforms is required. All resumes and links to your latest should be sent digitally to [jobs@wavy.com](mailto:jobs@wavy.com). No discs please. No phone calls, please. EOE.

### **Sales Assistant**

**Norfolk / Portsmouth / VA Beach, VA**  
LIN Media-Norfolk (WAVY TV-10 and WVBT FOX 43 TV) is looking for a Sales Assistant. Work with a high-performance sales team in the exciting environment of broadcast and digital advertising. Work with both Local and National accounts. Candidates must have a strong work ethic, be able to work well within deadlines in a fast-paced environment, and be dedicated to strong customer service. Prior media experience a plus; knowledge of Word, Excel and Power Point is necessary. Please send cover letter and resume to Director of Sales – Carol Ward WAVY-TV/WVBT 300 Wavy Street Portsmouth, VA 23704 EOE.

### **Account Executive Roanoke, VA**

WDBJ7, Roanoke, VA (DMA) Schurz Communications WDBJ7, the CBS

affiliate in Roanoke, VA, is looking for a dynamic Account Executive with strong negotiation and presentation skills to grow an established account list, develop new direct business, and increase web sales. College degree preferred. Minimum of three years' broadcast sales or equivalent experience preferred. Candidates must be self-motivated with a proven track record of success, and have a valid driver's license with a good driving record. Background and pre-employment drug screen required. Interested candidates please visit the following web site: [www.schurz.com](http://www.schurz.com). jobs and search Requisition Number WDBJ1838 to learn more about the position and apply. EOE.

### **Technical Media Producer Charlottesville, VA**

CBS19 is currently seeking a Technical Media Producer which has the general responsibility for coding and directing live or pre-recorded productions as assigned using the Ross Overdrive system, monitoring on-air signals, transmitter readings, FCC logs, ingesting and segmenting daily programming and commercials, and other duties as assigned. This is a full-time position and must be available for all shifts, including weekends and holidays. The successful candidate will possess strong communication and people skills and an operating knowledge of PCs. Prior Production / Master Control experience is a plus. Gray Television is an equal opportunity employer and a drug free environment.

**TV News Photojournalist / MMJ  
Norfolk / Portsmouth / VA Beach, VA**  
WAVY-TV 10 / WVBT FOX 43 is searching for a Photojournalist / Reporter at the number one station in the Norfolk, Va. market. The successful

candidate will have the ability to work with reporters and photographers to deliver news to our audience both on air and online; strong shooting and editing are a must. Successful candidate will be asked to work solo on general assignment stories, as well as shoot as a photographer when needed. We are looking for someone who actively engages in all of the tenets of journalism. The successful candidate must demonstrate the desire to put journalistic skills such as shooting, editing, newsgathering, writing, interviewing and ethical decision-making into practice on a daily basis. Experience in live truck operations a plus. At least 2 years experience and a good driving record required.

#### **Broadcast Engineer Richmond, VA**

NBC12, Richmond, VA's number one news station, seeks full time Television Broadcast Maintenance Engineer. Qualified applicant must have experience in installation, operation and maintenance of a wide variety of broadcast equipment including video servers, studio and master control equipment and on-air automation systems. Proficiency in computer skills and a solid understanding of television broadcast facilities a must. Transmitter maintenance experience, component level troubleshooting skills, formal or military electronics training a plus. Successful candidate must work well with others, be a motivated self-starter and a team player. Apply on line at <https://careers-raycommedia.icims.com>. No phone calls please. EOE-M/F/D/V.

#### **Weekend Meteorologist / Reporter Harrisonburg, VA**

WHSV-TV is hiring a Weekend Meteorologist / Weekday Reporter. Qualified candidates must have a Bachelor's degree in meteorology and/or broadcast journalism. One to two years of television weather and reporting experience at a commercial television station is preferred. NWA/AMS certification is desired, or interest in earning a Seal. Knowledge of WSI's TruVu MAX system is a plus. Responsibilities include, but are not

limited to, producing and presenting interesting, informative and accurate weathercasts. Qualified candidates will have an advanced understanding of meteorology, excellent communication and presentation skills, as well as a passion for news and weather. Send your resume, cover letter, reel and references to: Jay Webb, Director of Weather, [jwebb@whsv.com](mailto:jwebb@whsv.com). You may also mail your resume packet to WHSV-TV, 50 North Main Street, Harrisonburg, VA 22801. WHSV - TV is a drug free workplace. EOE / E-verify.

#### **Graphic Artist Roanoke, VA**

WDBJ7 is searching for a Part Time Graphic Artist with excellent designing and editing skills to join our team. This position will be responsible for designing graphics and animations for client commercials and other web uses. We're seeking someone with 6 months - 1 year graphic design experience in field of print, online or broadcast. An Associate's Degree in Graphic Design or related field or equivalent work experience is required, as is a valid driver's license with a good driving record. The position offers a competitive wage and includes paid time off and 401(k). Please visit [www.schurz.jobs](http://www.schurz.jobs) and search Requisition Number WDBJ1799 to learn more about the position and apply.

#### **Morning Web Producer Roanoke, VA**

WDBJ7 has an immediate opening for a morning Web producer. This position writes, shoots, reports, and edits news stories with a compelling, easy-to-understand delivery; generates story ideas; provides unique coverage on-line; posts stories and additional content to web sites. We're seeking someone with 1-3 years of journalism experience. A high school diploma/ GED and some collegiate background, along with a valid driver's license with a good driving record, are required. Please visit [www.schurz.jobs](http://www.schurz.jobs) and search Requisition Number WDBJ1798 to learn more about the position and apply.

#### **Account Executive Roanoke, VA**

The Account Executive is responsible for making revenue budgets. This includes selling advertising time to existing clients and developing marketing solutions for advertisers. A minimum of three years of media sales experience is required. Bachelor's Level Degree required. Apply online at [www.mediageneral.com/careers](http://www.mediageneral.com/careers) Cover letters and resumes should be mailed to Local Sales Manager, ATTN: Account Executive Opening, WSLs 10, 401 3rd Street, SW, Roanoke, VA 24011 EOE M/F/D/V Pre-employment drug and background screening required.

#### **News Producer Richmond, VA**

NBC12, Richmond's No. 1 news organization has immediate opening for creative, dynamic news producer. Successful candidate must be strong writer, energetic, self motivated and strong leader. No show stackers... just experienced leader with vision and skills to develop content. Apply on line at <https://careers-raycommedia.icims.com>. EOE M/F/H/V Drug Screen required.

#### **Asst. Program Director Fredericksburg, VA**

Rare APD / Afternoon Drive position available at Telemedia Broadcasting, Inc. in Fredericksburg, Va. (Market #147) Successful applicant must be an experienced Country Radio programmer and on air personality as well as an excellent on-stage and on-site entertainer. Additional experience needed for social media management, website hosting, graphic design and promotional pieces. Must have good grasp on the country listener's lifestyle and multiple platforms - on air, on line and mobile. Salary in the \$30's, plus talent fees and additional benefits. Enjoy a non-corporate friendly environment. Send T&R to [jobs@thunder1045.com](mailto:jobs@thunder1045.com) EOE.





## 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.

©2014 Brooks, Pierce, McLendon, Humphrey & Leonard LLP

**At a minimum, newsgatherers of all stripes need to be mindful of and involved in state and local legislative activity that may potentially restrict the use of UAS for newsgathering purposes.**

# Drone Opportunities for Virginia Broadcasters

The next time I go for a long hike alone in the Shenandoah National Park, I just might take a drone with me so that I can send for help when I break my leg, dehydrate, need help, and can't get my cell phone to work.

While I, as a non-commercial drone "hobbyist" or "modeler," might—emphasis on might—not violate any state or federal law if I were to send a drone to facilitate my rescue, the same cannot be said for many other potential drone operators. In fact, law enforcement in some states may not be able to send a drone to determine my specific location or provide me with medication, food, or water—Hunger Games style—because such activity could violate nascent state laws and regulations governing "surveillance."

In addition, the FAA has made clear that commercial drone use is generally not permitted at this time, which includes uses for newsgathering and journalism—so no television station would be able to send a drone to take footage of me and my broken leg. (While UAS enthusiasts might wish to believe that the FAA's position is in flux after the National Transportation Safety Board ("NTSB") determined that the FAA could not impose a \$10,000 fine on an individual in connection with his use of a drone to take photos of, and subsequently sell them to, the University of Virginia, the FAA has appealed the NTSB decision signaling that, for now, the FAA is holding firm to the prohibition.)

But while the FAA considers how to adopt an appropriate regulatory regime to govern the use of drones for commercial purposes—a task that Congress told the FAA it must accomplish by 2015—a great deal of activity is underway at the state and local level. As noted above, numerous state legislatures across the country have been considering—and in some instances adopting—bills to limit the use of drones by law enforcement, government agencies, and other entities and persons. Virginia, for example, was one of the first states (perhaps the first) to adopt drone legislation when it enacted a ban on governmental UAS use, subject to a variety

of exceptions, including one for certain "search and rescue operations" where use of UAS "is determined to be necessary to alleviate an immediate danger to any person" (so maybe law enforcement would be able to use a drone to facilitate my Shenandoah rescue after all!).

At a minimum, newsgatherers of all stripes need to be mindful of and involved in state and local legislative activity that may potentially restrict the use of UAS for newsgathering purposes. It is not hard to understand how and why the potential invasion of privacy implicated by overzealous UAS use would capture the imaginations of legislatures everywhere, but UAS use is clearly in its infancy, and even well-meaning legislation could hinder development of UAS applications. Moreover, broadcasters and other newsgatherers will wish to ensure that any records relating to UAS use by government agencies are subject to the applicable state public records laws. For example, if any government agency in Virginia operates a drone pursuant to one of the exceptions in the law, such use might, itself, be newsworthy, and broadcasters might want access to documents relating to the drone use, including any recordings made by the drone, records of the drone's flight path, and other data.

Finally, you may be aware that at the end of 2013, the FAA selected Virginia, specifically Virginia Tech, as one of six UAS test sites nationwide, which means that broadcasters and other newsgatherers in Virginia may have a unique opportunity to follow and monitor developments in the UAS industry.

These flying robots are an exciting technology that broadcasters are chomping at the bit to employ for newsgathering and other purposes. As noted above, however, any commercial use is, for now, subject to FAA enforcement action, but broadcasters should stay tuned and get involved to ensure that the future of UAS journalism can really take off. ■

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